CLAIM OF VIRGINIA.

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JANUARY 16, 1832.

Mr. J. S. BARBOUR, from the Select Committee, to which the subject had been referred, made the following

REPORT:

The Committee to whom was referred the memorial of Thomas W. Gilmer, commissioner delegated by, and acting for and in behalf of the Commonwealth of Virginia, report:

That the objects of the memorialist are distinctly set forth in the concluding paragraph of the memorial, and are as follows: First, that provision may be made by law to refund to the State of Virginia, all sums of money which have been paid by that State, to officers and the legal representatives of officers, in the army of the war of the revolution, both upon State and continental establishment, in discharge of the obligations incurred to them by Virginia, for revolutionary services. Secondly, that the United States assume to that class of claimants, the payment of all other sums of money which the Commonwealth of Virginia has contracted to pay to them for services in the common cause; and in virtue of the promises of half pay for life, "unless Congress make tantamount provision" Thirdly, that the deficiency in reservations of bounty lands, made by the State in the cession of the Northwest Territory, be made good by the United States; and lastly, that all interest which may be found to be due to that State, for advances made during the last war, be now liquidated and paid by the Government of the United States.

These topics have employed the deliberations of the committee, and they forbear to touch the subjects involved in the demand for interest on advances during the last war, and the enlargement of the reservations for land bounties. An enquiry into the latter of these demands, has already been cast, by command of the House, upon one of its Standing Committees; and the propriety of allowing interest, is now before Congress, in a general bill, intending to provide for like cases among all the States. This committee, therefore, respectfully decline the discussion, at this moment, of either of those subjects.

It appears that the Commonwealth of Virginia had raised several regiments of troops, for the prosecution of the war of the revolution, and for the common defence. These were apart from, and in addition to the quota that the State was required to raise for the continental establishment. This was done in the early struggle for independence, and these regiments were designated as belonging to the State line. They were engaged a very short time, if at all, in the local defence of Virginia, but aided in the common cause, and beyond the present limits of that Commonwealth. In this class of soldiers we find the first and second regiments of infantry; Clarke's and Crocket's regiments, and Rogers' troop of cavalry, employed in the conquest and protection of Illinois, Kaskaskias and St. Vincents; and the regiment of State artillery, commanded by Colonel Marshall. At the May session, 1779, of the General Assembly of Virginia, it was enacted into law that "all general officers of the army, being citizens of this Commonwealth, and all field officers, captains, and subalterns, commanding, or who shall command in the battalions of this Commonwealth on continental establishment, or serving in the battalions raised for the immediate defence of this State, or for the defence of the United States; and all chaplains, physicians, surgeons, and surgeons' mates, appointed to the said battalions, or any of them, being citizens of this Commonwealth, and not being in the service of Georgia, or of any other State, provided Congress do not make SOME TANTAMOUNT PROVISION FOR THEM, who shall serve henceforward, or from the time of their being commissioned, until the end of the war; and all such officers who have, or shall become supernumerary on the reduction of any of the said battalions, and shall again enter into the said service, if required so to do, in the same or any higher rank, and continue therein until the end of the war, shall be entitled to HALF PAY DURING LIFE, to commence from the determination of their command or service."*

The State of Virginia, manifested in this statute, a repugnance to make any discrimination between her troops, whether upon State or continental establishment, either in the measure and character of the service, or in the measure of reward. They were all to be employed "in defence of that State, or the United States," and the remuneration of half pay for life, in return for the services so required, was promised without distinction to the State and continental lines, "provided Congress do not make some tantamount provision for them." It will be seen, in the sequel, that the regiments mentioned herein, were chiefly in continental employment, and have been so regarded. The provision theretofore made by Congress, did not reach their cases, and extend to them the measure of justice they expected and demanded, at the close of the war; and failing in this, they required of Virginia, to fulfil her promises, embodied in the act of Assembly recited above. From Congress, this class of complainants might supplicate justice, in the meek language of petition; from Virginia, it might be extorted by

coercion of law.

Virginia had voluntarily divested herself of one of the attributes of sovereignty, by permitting herself to be sued and empleaded in her own courts. By a pre-existing law, which had already passed at the October session of the Legislature, in the year 1778, it was enacted, "that where the auditors, acting according to their discretion and judgment, shall disallow or abate

^{*} See Henning's Statutes at large, 10th Vol. page 25.

any article of demand against the Commonwealth, and any person shall think himself aggrieved thereby, he shall be at liberty to petition the high court of chancery, or the general court, according to the nature of his case, for redress, and such court shall proceed to do right thereon; and a like petition shall be allowed, in all other cases, to any other person, who is entitled to demand against the Commonwealth, any right in law or equity ." * The officers of these regiments, and others similarly circumstanced, addressed to the auditors their demands for the half pay for life, promised in the act of 1779. These demands were disallowed; and the Commonwealth having already authorized and invited appeals from the judgment of the officer dependent on her will, to the judges of the courts, who held their seats by no precarious tenure; the officers claiming the half pay carried their demands to the courts, where the decision of the auditor was overruled, and judgments rendered in their favor. This contest quickly found its way into the court of the last resort, (the supreme court of appeals;) where the decision of the chancellor was reversed, and that of the auditor confirmed, But in this decision, there was an express saving to the officers claiming the half pay, to have their cases readjudicated "without prejudice, on fuller proof." No attempt was made to disturb this decision, until within a few years past. Fuller proof was found in an authentic record, placing the evidence of service beyond the reach of rational doubt; and after passing again through the several intermediate tribunals, the same questions were submitted to the supreme court, and the claims allowed, by a decision from which there is no appeal. Virginia resisted this recovery, with her best exertions; although the judgment of her highest court is known to be coincident with that of the Congress of the United States, in like cases, from March 1783 to the present time.

By this decision the state of Virginia alleges that a heavy liability is devolved upon her, which should rightfully be assumed and discharged by the United States. That state asserts that the half pay for life, promised by the act of 1779, was compensation for services rendered, not to her, but to the United States; not to a single State, but in the common cause of the whole confederacy. Your committee concur in opinion, that if the remuneration now demanded, in the half pay for life, be for common services rendered to all, that it should be paid by joint contribution, or rather from the common Treasury.

This would seem to be in close conformity to those principles in which the articles of confederation were laid. But Virginia claims the reimbursement and indemnity she seeks, by more positive and acknowledged obligations, which are declared to rest on the plighted faith of the Govern-

ment of the United States.

Of all the States in the confederacy, Virginia claimed to possess the proprietory and sovereign power over the widest and the richest domain. The cession of her extensive territory, in the west, to the United States, was pressed, in earnest appeals, to her sense of justice, as well as to her love of union. To these appeals she finally yielded, upon conditions mutually stipulated, by and between herself and the confederacy. Virginia claimed title in this extensive territory, by charter from the crown; and she had acquired possession from the common enemy, by the sword. The price of its conquest was to be repaid to Virginia, as the condition on which its

cession was bottomed. And that condition is set out in the following terms: "that Virginia shall be allowed, and fully reimbursed by the United States, her actual expenses in reducing the British posts at Kaskaskias and St. Vincent's; the expense of maintaining garrisons and supporting civil government there, since the reduction of the said posts; and, in general, all the charge she has incurred on account of the country on the northwest side of the Ohio river, since the commencement of the present war." Your committee are satisfied that the regiment called the Illinois regiment, and commanded by George Rogers Clarke, Crocket's regiment, and Rogers' troop of cavalry, were all raised and equipped by Virginia for the purpose of conquering and protecting the country north west of the Ohio river. That the half pay for life promised by Virginia to the officers commanding these troops, makes a part of "the charge incurred on account of that country," "its conquest, garrisons," &c.; that it has never been reimbursed to

her, and ought now to be paid by the United States.

The committee have examined the claims for half pay to the officers of the 1st and 2d regiments of State infantry, commanded by Colonel George Gibson, and Col. Dabney, or Col. Brent. The first of these regiments was transferred by act of assembly, in the year 1777, from the State into the continental service. That transfer, and its acceptance by the United States, put this portion of the claim out of the reach of controversy. It is represented, and it is confirmed, in a great measure, by the history of the times, that the perils which threatened one of our largest cities, (Philadelphia,) and the dangers that environed the American army under the commander-inchief, in the campaign of 1777, induced Virginia to send from that Commonwealth, the 1st and 2d regiments of her State line, to aid in that campaign. The misfortunes that befel our arms in the Autumn of that year, in the battles at Brandywine and Germantown, stimulated Virginia to permit these regiments to remain with the continental army. By law, Gibson's regiment was turned over to the continental line, and Virginia could not have recalled it, had she willed it. (See the letter of the Secretary of War.) And the 2d regiment served through the whole time, not in Virginia, but beyond its limits, and with the continental army. Nominally a State regiment, it was really continental. In every hard fought action to the north, from that at Brandy wine to the victory of Monmouth court-house, these regiments partook. For proof of the campaigns they served, out of Virginia, see the letter of Chief Justice Marshall.

Believing that these regiments were virtually continental, the committee d cide that the United States ought to relieve Virginia from the obligation to give their officers half pay for life. Because they regard Gibson's (or the first) regiment as being actually and nominally continental by the law, before referred to, and placed in that service in substitution of the 9th Virginia regiment, cut up or captured at Germantown. The second, or Dabney's and Brent's regiment, marched with the first, served throughout with the first, and that it is the service, not the name, that gives the claim to half pay. It was alike continental in its service, and as much so as the first re-

giment. The committee will not discriminate.

The remaining class of officers, whose claims are now brought forward by Virginia, embraces those of the regiment of State artillery, State garrison, and the officers of the navy. The naval officers must, of necessity, have been employed "in the general, and not the particular defence;" and if we regard the substance, and not the forms of things, we shall find no plausi-

ble grounds for cavil against their claims. The regiment of State artillery, commanded by Colonel Marshall, was raised like the other troops mentioned in this report, for the defence of the State and the United States; and had a like claim upon the justice of the Commonwealth of Virginia, for the half pay promised, "provided Congress made no tantamount provision." The service of this corps is shown by the letter of the Chief Justice, which is appended to this report. It may be remarked very properly at this place, that every claim now presented and maintained against Virginia, is for compensation promised either "for the general or particular defence;" and that State may rightfully demand indemnity, according with the strictest interpretation of the report of the first Secretary of the Treasury of the United States upon this subject, and the act of Congress of which it was the parent. That report asserts the obligation in the United States to provide, by law for all the expenditures during the war, either for the general or particular defence; and it adds, in its own emphatic language, that "it appears difficult to conceive a good reason why the expenses for the particular defence of a part, in a common war, should not be a common charge, as well as those incurred professedly for the general defence. The defence of each part is that of the whole; and unless all the expenditures are brought into a common mass, the tendency must be, to add to the calamities suffered by being the most exposed to the ravages of war, an increase of burthens." This principle, indispensible to common and mutual justice, was engrafted into the act of Congress of August, 1790; and its operation extended in practical efficacy, by dispensing with strict proof. The rigor of the law was mitigated by legislative command, to the end, that this principle might be expanded to its widest sphere of action.

In conclusion, your committee believe that the United States should reimburse to Virginia, whatever, sum of money the State may have paid to the officers of the regiments and corps herein mentioned; provision should be made by law, to pay and acquit the judgments already rendered, or that may hereafter be rendered against Virginia, in her courts, for, and in behalf the officers or their legal representatives, for, and on account of the half pay promised for life by that State in 1779; that, in like cases, where no judgments have been obtained, nor suits instituted, that payments should be provided for by the United States; and the future half pay accruing and hereafter payable, should

likewise be provided for by this Government.

It is shown that the Commonwealth of Virginia has already paid from her treasury on account of, and in discharge of these claims, \$139,543 66; that of this sum \$58,562 87 were paid prior to 1796, and \$72,007 73, since that time; that subsisting and unsatisfied judgments have been rendered against Virginia on the same account, to the amount of \$241,345; and that there are unliquidated claims of similar kind, of which no accurate knowledge can now be had.

For the purpose of carrying out the views of the committee here expressed, they report a bill.

MEMORIAL ON CERTAIN CLAIMS OF THE STATE OF VIRGINIA AGAINST THE UNITED STATES.

DECEMBER 19, 1831.

Referred to Messrs. Barbour, of Va., Nuckolls, Kendall, A. H. Shepperd, J. King, Burd; and Marshall.

Washington City, Dec. 19, 1831.

Sir: I have to request that you will submit, for the consideration of the House of Representatives, the accompanying memorial on the subject of certain claims of the State of Virginia against the United States. The documents, and other evidence referred to in the memorial, are in my possession, and await the disposition of the House of Representatives.

With esteem, &c., yours,
THOMAS W. GILMER,
Commissioner on behalf of the State of Virginia.

To Hon. Andrew Stevenson.

To the Speaker and Members of the House of Representatives, and the Senators of the United States, in Congress assembled:

The memorial of Thomas W. Gilmer, Commissioner on behalf of the State of Virginia,

RESPECTFULLY REPRESENTS:

That the General Assembly of Virginia, believing that their State "has a valid and substantial claim on the United States for various large sums of money which have been paid, and which that Commonwealth may be bound to pay, on account of the services of the troops of her State line during the war of the revolution," made provision by law, at their last session, for the submission of such claim to the proper authorities of the United States.* Your memorialist has been charged by the Executive of Virginia, under authority of the Legislature, with the duty of presenting this subject for your consideration.

It is not expected or desired that the United States should compensate the State of Virginia for the losses and sacrifices which that Commonwealth sustained during the revolution. These were borne in common with the other States, and the reward has been enjoyed by all, in the permanent es-

^{*}See sessions Acts of Assembly, 1830-31, page 131.—No. 1.

tablishment of those rights and liberties, for which the "lives, the fortunes, and the sacred honor" of the American people were pledged. Virginia solicits no boon from your generosity—she would invoke your justice, with that confidence which is inspired by a scrupulous observance of faith, as well between governments as individuals. She asks, on the present occasion, only that the United States will discharge those obligations which have been voluntarily assumed, in that spirit of comprehensive justice

which has always distinguished the intercourse of the States.

*The unanimous resolution of the Virginia convention on the 15th of May, 1776, declaring the independence of that Commonwealth, and instructing its representatives in Congress to propose a similar declaration on behalf of the United States, was immediately followed by the most active and energetic preparations to maintain so perilous a position. monished by the previous effusion of blood, that all hope of honorable reconciliation had passed, the Convention did not hesitate to place the entire resources of the State in requisition, to meet the impending struggle. Besides meeting the demands of the continental service with all the promptness of which she was capable, Virginia was compelled throughout the war to maintain a large military and naval force to repel invasion from her own territory, which was generally the theatre of active hostilities. These troops of her State line were not employed only in her own defence. Their services in the most distant quarters of the Union are attested by many of the most arduous campaigns of that eventful war. To preserve the chartered limits of her territory, Virginia carried her arms far into the west at an early period of the war; and, holding a vast dominion by the double right of compact and conquest, she had to protect an extensive maritime and inland frontier from invasion. Without commerce or fiscal resources adequate to the occasion, after resorting to loans as far as her credit allowed, she could do no more than encourage her troops to persevere in the dubious struggle, by multiplying large promises of reward. Like all the engagements of the States at that period, these promises were contingent; their fulfilment depending on the successful termination of the war. Virginia relied chiefly on her western domain as a fund which would ultimately enable her to redeem the very liberal promises of money and of landbounties which she made to her troops both on continental and State establishment. This same policy was pursued also by Congress, to an extent greatly beyond the means then possessed by the United States. Land bounties were promised by Congress to the continental troops as early as September, 1776, while Congress were without the means of fulfilling their engagements. It was resolved, at the same time, that "such lands shall be provided by the United States; and, whatever expense shall be necessary to procure such lands, the said expense shall be borne by the States in the same proportion as the other expenses of the war."

Relying on the ample prospective resources in which she then abounded, Virginia provided, by an act of Assembly, passed in May, 1779, that the officers in the service of the State, on continental or State establishment, "who shall serve henceforward, or from the time of their being commissioned, until the end of the war, and all such officers who have or shall become supernumerary on the reduction of any of the said battalions, and shall

^{*} See Henning's Statutes at Large, vol. I, page 7.—No. 2. † See Journals of Congress, Sept. 1776.—No. 3.

again enter the said service, if required so to do, in the same or any higher rank, and continue therein until the end of the war, shall be entitled to half pay during life, to commence from the determination of their command or service."* The motives which induced the passage of this act may be easily appreciated by those who will advert to the history of that period of our revolution. It was designed to nerve the arms of a desponding soldiery—to encourage them to fight the battles of their country, with the hope that their toils and perils would be finally compensated. The effect which was produced on the army by this act, can be attested still by the surviving witnesses of those times.

The war had no sooner closed than the claims of the troops became a subject of anxious solicitude, both with the States and in Congress. Destitute of means to fulfil their engagements, either domestic or foreign, and without authority to adjust the embarrassing questions which had already arisen, Congress was dependent on the States to whose indulgence and magnanimity it had occasion more than once to appeal. Virginia responded to these appeals by the prompt and voluntary surrender of her western domain, whereby an ample fund was provided for the redemption of all the pledges which Congress had given. Three flourishing States have sprung from this cession, whose representatives, in common with those of the Union, are now asked to do justice to Virginia.

Virginia was thus left with diminished resources, to provide for the payment of the numerous and large debts which had been contracted during the war, while her territory reached from the Atlantic to the Mississippi. The establishment of Kentucky, soon afterwards, as an independent State, still farther diminished these resources. Notwithstanding these considerations, before she had repaired the ravages of war, Virginia undertook to arrange her disordered finances, and to provide for the immediate and faithful discharge of her engagements, as well to private individuals as to her

troops.

In settling the claims of her troops, a question arose as to the half pay of the supernumeraries of the State line, under the above recited act of May, 1779. The Auditor of public accounts having refused to pay these claims, or grant certificates for them, the officers appealed to the district and chancery courts, where the decision of the Auditor was reversed; and the Commonwealth appealed from these decisions to the Supreme Court of Appeals. The decision of the Auditor was here affirmed, and the † claims re-

jected, "without prejudice on fuller proof."

By levying burdensome taxes on her citizens, Virginia began to extinguish her debt immediately after the restoration of peace, and had discharged a large portion of it, when the proposition was made, soon after the adoption of the present federal Constitution, to fund the State debts as part of the general debt of the United States. ‡ Virginia was opposed to this measure, as she conceived it would operate very injuriously on her interests. She believed that she had paid a much larger portion of her debt than many of the other States, while the evidences or certificates had been destroyed as they were paid, so that it would be impossible to estimate them in the assumption by Congress. The journals of the Virginia Legislature testify

^{*} See Henning's Statutes at Large, vol. X, page 25 .- No. 4.

[†] See Chancellor Wythe's Reports, page 62.—No. 5. * See Journals of House of Delegates, 1790.

that large sums were thus annually paid, and the certificates regularly desstroyed, from the period of peace until a short time before the passage of

the funding act of 4th August, 1790.

* By this act, \$21,500,000 was authorized to be funded on account of the debts of the several States; of which sum, \$3,500,000 was allowed for the remaining debts of Virginia. Though a large portion of the State debt of Virginia had been paid from her own treasury, previous to the passage of the act of August 4th, 1790, still the sum of \$2,934,443 was subscribed in certificates which had been issued to her creditors, and remained unredeemed.

† The act of Congress of August 5th, 1790, provided a board of commissioners "to settle the accounts between the United States and the individual States." "The determination of a majority of these commissioners, on the claims submitted to them," was declared to be "final and conclusive." They were required to "determine on all such claims as shall have accrued for the general or particular defence, during the war, and on the evidence thereof according to the principles of general equity, although they may not be sanctioned by the resolves of Congress, or supported by

regular vouchers."

The commissioners under this last act proceeded, according to the provisions of the 5th section, to "debit each State with all advances which had been, or might be, made to it by the United States, and with the interest thereon, to the last day of the year one thousand seven hundred and eightynine," and to credit each State for its disbursements and advances, on the principles contained in the third section," (viz. whether made for the general or particular defence, &c.) "with interest to the last day of the year 1789," "and having struck the balance due to each State," found "the aggregate of all the balances, which aggregate was apportioned between the

States" according to their federal population.

t It was reported under this act, that the State of Virginia was allowed for advances, &c. during the revolution, the sum of \$19,085,981 51 cents. This was the aggregate of debits allowed to Virginia against the United States. From this sum \$3,803,416 51 cents was deducted, that being the amount of credits to which the United States were entitled, for advances made to the State of Virginia, including the \$2,934,443 which had been assumed and funded on account of her State debt. The sum of \$15,282,565 remained due from the United States to the State of Virginia. Balances having been found due, by similar process, to all the States, the aggregate of these balances, viz. \$77,666,678, was distributed according to the 5th section of the act of August 5th, 1790, among the thirteen States in proportion to their population. The federal population of Virginia, including Kentucky, under the first enumeration, was 699,265—exceeding by 223,938 the enumeration of Massachusetts, then the next State in point of popula-The quota of the general aggregate of \$77,666,678, which was assigned to Virginia (Kentucky included) was \$15,383,444, exceeding the balance previously found due from the United States to Virginia, by \$100,879 to which amount Virginia was reported a debtor State. Thus, though Virginia entered on the settlement of this account with the United States, after she had extinguished a very large portion of her debt, by pay-

^{*} See Laws of the U. S. Story's edition, vol. 1, page 114, No. 6.

[†] See ibid. vol. 1, page 158, No. 7. ‡ See Report of Commissioners, No. 8,

ments from her treasury, and had destroyed the certificates which were taken in; and though she was allowed under these circumstances, the sum of \$19,085,981 51 cents on account of her own expenditure during the war, yet she was reported a debtor State to the amount of \$100,879, in consequence of the large quota of the general aggregate which was assigned to her, including that of Kentucky. The expenditure of Virginia, as stated by these commissioners, exceeds that of any other State by more than

\$1,000,000.

Such was the result of this settlement between the revolutionary States and the United States. Virginia does not complain of this result, though it is manifest that it operated to her injury. She was charged with the quota of Kentucky, though Kentucky became a separate and independent State on the 1st of June, 1792, before the final report of the commissioners who settled these accounts. It is more than probable, also, from the amount of the debts of Virginia, as reported by a committee of the House of Delegates, after the close of the war,* and from the annual destruction of the certificates as payments were made by the State, that a very large sum which had been actually paid by Virginia, was omitted in this settlement. Still, it is not sought

to disturb the principles or the result of this settlement.

It has been stated that the claims of the supernumerary officers of the Virginia State line, had been a subject of controversy, and that they had undergone a judicial investigation, while the State was actively engaged in settling and discharging the debts of the revolution. The highest court of the State had decided that the Commonwealth was not bound to pay these claims, while the accounts of the States and United States were in progress of settlement, under the act of 1790. The decisions of that day, resulted from the interpretation which was then given by the courts to the act of May, 1779 under which half pay for life was claimed by supernumerary officers of the continental and State lines, and probably also from the defective proof of the parties, as the claims were rejected "without prejudice or fuller proof." In consequence of these decisions, the Commonwealth considered that it was not bound to pay the supernumerary claims, and, of course, did not exhibit them as items of charge against the United States, on the settlement of accounts.

The recent discovery of certain revolutionary documents, including the reports of several boards of officers convened during the revolution, under authority of the Legislature and Executive of Virginia, in reference to this very question of half pay, induced the officers of the State line, who survived, and the heirs or assigns of those who died, to renew their claims against the Commonwealth for half pay, under the act of May, 1779. These claims have been again carried, by the Commonwealth, to the supreme court of appeals of the State, where the former decisions of that tribunal, with regard to them, have been reversed, and the obligation of the Commonwealth to pay them, established by the judgment of a tribunal of competent jurisdiction, from whose decision there is no appeal. † The authenticity of the documents recently discovered, is believed to be unquestionable, as they have passed

the ordeal of judicial scrutiny. ‡

^{*} See Journals of H. of D 1784.

[†] See Leigh's Report's vol 1, pages 516 and 525—No. 9. ‡ See certified copies herewith exhibited—No. 11.

Virginia has paid claims of revolutionary officers, since the settlement with the United States, to the amount of \$139,543 66.* Judgments have been rendered against the Commonwealth, on these claims, to the amount of £241,345.†

The claims now pending against the Commonwealth, including those reported by the boards of officers, which are not yet prosecuted, are estimated at \$300,600, which are supposed to rest on the same principles with others on which judgments have been rendered. ‡

Making an aggregate of \$681,488 66.

No argument will be required, it is presumed, to prove that the distinct and positive obligations which the United States so often assumed, with regard to the expenditure of the States duing the revolution, would have rendered every cent which has been paid, or which is claimed of Virginia, under the act of May, 1779, a proper and legal charge against the United States, had the claims of the supernumerary officers of the State line been voluntarily acknowledged by Virginia, or had it been judicially determined that she was bound to acknowledge them, previous to the settlement of her accounts with the United States. For proof of these obligations, on the part of the United States, your memorialist would refer to the journals and acts of Congress, from the 8th article of confederation to the passage of the acts of August, 1790, under the existing Federal Government. The sums which have been thus paid, and are claimed of Virginia, are debts contracted during the most gloomy and disastrous period of the revolution, with officers who were then fighting the battles, not of Virginia alone, but of the American people. Can it be doubted, then, that they would have constituted legal and absolute charges against the United States, had these judgments been rendered against the Commonwealth before the settlement of its accounts with the United States? Presuming that this position will not be questioned, it may be inquired whether any thing has occurred which can impair this obligation?

No laches or neglect can be imputed to Virginia, because those claims could not have been asserted against the United States on the former settlement, as it had been judicially decided (and as was supposed) settled, that Virginia was not bound to pay them. Jurisdiction of claims against the Commonwealth, was given by law to the courts of Virginia, as early as October, 1778. Virginia had thus, at a very early period, (before the passage of the act in question) permitted herself to be empleaded in her own courts. Had these claims been presented by Virginia before the commissioners who settled her accounts with the United States, they would have been disallowed, in consequence of the decisions which had been rendered by the courts. They were not exhibited by Virginia, because she conceived that she was exonerated from all charge on their account. The decisions of the district court of law, as well as the chancery court, (rendered before the settlement with the United States was made) were favorable to these claims. The claims were carried by the Commonwealth to the supreme court of appeals, where these decisions were reversed. By acquiescing in the judgments of the district and chancery courts, Virginia might have

^{*} See statement of Auditor herewith exhibited—No. 12.

⁺ See ibid.

see ibid.

⁵ See Henning's St. at Large, vol. 9th, page 540 -Nc. 13.

insisted on the allowance of the claims in her account against the United States. She could have had no sinister motive, in desiring that her obligation to pay them, should be thoroughly tested, as she thus protected the interests of the United States, while to her it was then a subject of comparative indifference. The State of Virginia, however, did not think proper to exhibit against the United States, any claim on which the slightest shade of doubt could rest, though such a claim was in behalf of her own citizens, and its almission would have increased her wealth, instead of subjecting her to charge.

After the discovery of the revolutionary documents previously referred to, and when most of the supernumerary officers and their descendants had become citizens of other States, these claims were presented to the Legislature, under the persuasion that their validity was now so clearly established as to ensure their admission. As they had been the subject of judicial investigation, and were demanded of the Commonwealth, not as gratuities, but ex debito justitiæ, under the terms of a positive contract, the Legisla-

ture refused to interfere with them.*

The claimants then resorted again to the courts having been first rejected by the Auditor, as the accounting officer of the State. Being allowed by the circuit court of Henrico, appeals were again taken by the Commonwealth to the supreme court of appeals, where, in 1830, the former decisions of that tribunal in relation to these claims, were reversed, and the obligation of the State to pay them distinctly established. The payment of these claims was neither acquiesced in, or connived at by the Commonwealth, as her attorney general resisted them throughout their progress from the infe-

rior courts to the court of appeals.

Will it be alleged that the United States are exonerated by lapse of time, from their obligation to admit these claims? This defence did not avail Virginia.† The lapse of time can only be regarded, as authorising the application of some rigid rule of limitation, previously prescribed, or as inducing a presumption that these claims have been actually paid by the United States. Your memorialist, is not aware of any positive rule which has been prescribed by the United States, limiting the right to petition, or the obligation of the Government to award redress, in such cases. If the usage which has prevailed in the intercourse among distinct and foreign governments, does not interdict a resort to the principle of limitation as between a State and the United States, and if it were competent on this occasion to rely on a defence which is seldom deemed proper among individuals, still there can be no positive or implied limitation of a right or remedy, so absolute as not to yield to circumstances. Since governments are not, and in the nature of things, cannot be, equally subject to the coercive jurisdiction of courts, as individuals, all claims against them are addressed more or less to their discretion, and sound sense of right and wrong. The same fixed and obvious rules of justice apply to the transactions of governments as to those of individuals. It may be assumed as a general position, that a government will do what it ought to do, and that it ought to abide by the same established rules of justice which regulate the affairs of individuals. It is asked, then, whether the peculiar and strong circumstances which have marked the history of these claims, would not exempt them from the operation of a positive limitation, had any such been imposed?

^{*}See J urnals H of D. 1829-30. †See Leigh's reports, vol. 1, page 525.

It is believed, however, that it will not be necessary to temper the severity of any such strict rule, on the present occasion, by an appeal to those circumstances which would exempt these claims, were they transactions between individuals instead of governments. There is no time prescribed for justice to be done by one government to another——: their intercourse is always controlled by general rules of propriety, and by that exalted equity

which knows neither time nor place.

The presumption that these claims have been paid by the United States, is not only unwarranted by the lapse of time, but is repelled by all the facts of the case. The right to demand payment of the United States did not accrue to Virginia, until her own obligation to pay the officers was established. It is not therefore possible, in the nature of things, that these claims could have been sooner exhibited against the United States; and it is not to be presumed, that they were paid without being demanded. It is obvious too, that such presumption of payment, were it authorised, would have operated equally to exonerate Virginia from her responsibility to the officers.

If it is conceded, that these supernumerary claims are debts which were contracted by Virginia in prosecuting the war of the revolution—and that as such, they would have been unquestionable charges against the United States on the former settlement of accounts, had they been paid or assumed by the State, why should they be less so now, when they are demanded immediately after they have been established against Virginia? The act of 1790,* provides that "the determination of a majority of the commissioners, on the claims submitted to them, shall be final and conclusive." It is clear that these claims were not, and could not have been submitted to them.

Will it be objected, that the construction of the act of May, 1779, adopted by the court of appeals in 1830, as to the rights of the supernumerary officers of the State line is incorrect? It should be remembered, that the same construction of this act was adopted by Congress in March, 1783, as it regarded the rights of the supernumerary officers of the continental line. About the close of the war, the officers of the continental army petitioned Congress to commute their half pay during life for some specific amount; and it was thereupon resolved, that those officers who should elect to do so might receive five years' full pay as a commutation for their half pay for life. It was further resolved, "That such officers as have retired at different periods, entitled to half pay for life, may, collectively, in each State of which they are inhabitants, accept or refuse the same; their acceptance or refusal to be signified by agents authorized for that purpose, within six months from this period; that, with respect to such retiring officers, the commutation, if accepted by them, shall be in lieu of whatever may now be due to them since the time of their retiring from service, as well as of what might hereafter become due; and that so soon as their acceptance shall be signified, the superintendent of finance be, and he is hereby directed to take measures for the settlement of their accounts accordingly, and to issue to them certificates, bearing interest at six per cent."

If the term retiring officers, as adopted by Congress, is not precisely synonymous with that of supernumerary officers used by the Virginia Le-

^{*}See Laws U. S. Story's edition, page 158. †See Journals of Congress, March, 1783, No. 14.

gislature, the only difference between a retiring and a supernumerary officer, is one which renders the claim of the former to half pay much more questionable. A supernumerary officer, (as is expressed in the act of May, 1779,) is one who, by the reduction of the corps to which he may have been attached, or the expiration of the period of enlistments of the troops under his command, is placed out of service by the act of the Government. If the term retiring officer means any thing else, it must comprehend the case of an officer who quits the service, not from compulsion, having no command assigned to him, but from choice, and therefore as his own voluntary act. It is believed, however, that the supernumerary or retiring officers of the Virginia line on continental establishment, did actually receive their commutation under the foregoing resolution, in lieu of their half pay claimed under the act of May, 1779.

But whether the decisions of 1830 be correct or not, they are of binding force on the Commonwealth, and establish its obligation to pay these claims. There is no court of higher jurisdiction known to the laws of the State, and therefore the error of these decisions (were it admitted) cannot be judicially revised or corrected. Under these circumstances, it remains for the Commonwealth to abide by the judgments of the courts to which it has submitted its rights, or to violate its public faith implied in the submission.

These supernumerary claims, under the act of May, 1779, are believed to be peculiar to Virginia. Their admission cannot, in any wise, disturb the principles or the results of the former settlement between the States and the United States. Though it is believed, that if Virginia had been allowed the full amount of expenditures which she actually incurred before that settlement, she would have been reported a creditor instead of a debtor State, yet it is not attempted to impugn a settlement of such long standing, nor does Virginia seek to re-adjust her own settled accounts by disturbing those of other States.

With the exception of a few cases, it is the principle only of these halfpay claims which you are asked to refund to Virginia, as no interest was

allowed on the claims which have been adjudicated by the courts.

The State of Virginia has never commuted the half-pay of her officers, as was done by Congress in regard to the half-pay of the continental officers. It was not competent for her to do so, or otherwise to vary her contract under which the claims were asserted, without the consent of the contracting parties; and the officers of the State line never petitioned for commutation, as those of the continental line did. In some few cases, the commutation has been voluntarily accepted by the officers of the Virginia State line, but the courts have uniformly rendered judgments for half pay during the life of the officer when it has been demanded.

It will be perceived, on inspection of the documents already referred to, that a large portion of what has been paid, and of what is still claimed of Virginia, is the half-pay of officers belonging to the regiments commanded by Colonels Gibson, Clarke, and Crockett, and the corps of dragoons com-

manded by Captain Rogers.

The regiment commanded by Col. George Gibson (generally known as the first Virginia State regiment) was transferred to the continental service in October, 1777, in place of the 9th Virginia continental regiment, which was captured at the battle of Germantown.* Gibson's regiment was

^{*} See Henning's Statutes at Large, vol. 9, p. 337-No. 15.

actually in the service of the United States when it was thus transferred by law, though it had been raised for the particular defence of the State. This regiment continued in the continental service throughout the war. It has been recognized as a continental regiment both by Congress and the other departments of the Government, and its surviving officers are now receiving pay from the United States under the provisions of the act of Congress of May 15th, 1828. Payments have been made by Virginia to officers and the representatives of officers belonging to this regiment, to the amount of about \$42,000; judgments have been rendered on similar claims against the Commonwealth to the amount of about \$27,000; and those claims of the officers of this regiment, which are not yet prosecuted, (but for which the State is liable on the principles of these judgments, (are estimated at \$31,200.* Making an aggregate of more than \$100,000.

The State of Virginia has also paid, since the settlement of her accounts with the United States, several large sums of money to the other continental officers or their heirs. Among these payments is one made to Sarah Easton and Dorthy Storer, children of Robert H. Harrison, (a continental officer, and aid to General Washington,) for \$8,973 10.† It is presumed that the obligation of Congress to provide for the continental troops, will not be questioned, and that you will promptly relieve the State of Virginia from all charges which have been incurred on account of your own peculiar en-

gagements.

The history of Clarke's celebrated conquest of the British posts of Kaskaskias and St. Vincents, is familiar to every American. The boldness, enterprize, and splendid success, which distinguished this campaign, found no parallel in the events of modern war, while they almost realized the fabulous adventures of antiquity. This expedition established at one blow, the undisputed dominion of Virginia over her western territory, and extended the boundary of the United States under the treaty of 1783, from the Ohio to the Mississippi. It was accomplished by troops of the Virginia State line. This important service had been rendered previous to the passage of the act of May, 1779. By one of the provisions of that act, a troop of horse was raised, consisting of a captain, a lieutenant, a cornet, and thirty-two privates, t which was destined in aid of the regiment commanded by Clarke, for the protection of what had already been established as the county of Illinois. S By the same act two regiments were required to be raised for the defence of the western frontier of Virginia. This requisition was subsequently modified by the act of October, 1779, and one regiment then only was raised for this station; to which the corps of infantry, then under command of Col. Slaughter, was added. The regiment raised for this service was commanded by Col. Crockett, and is believed to have been stationed on the Ohio at the close of the war.

The expenses of the troops thus raised by Virginia for the conquest and protection of the northwest territory, were specially provided for by the compact under which that territory was ceded to the United States. The deed of cession executed 1st March, 1784, provides, "that the necessary and reasonable expenses incurred by the State of Virginia in subduing any British posts, or in maintaining forts or garrisons within, and for the defence,

^{*} See statements of Auditor, and other documents herewith exhibited.

[†] See act of Assembly, Feb. 1814. ‡ Captain Rogers commanded this troop.

[§] See Hen. Stat. at Large, vol. 10, p. 26—No. 16. See ibid, page 215—No. 17.

or in acquiring any part of the territory so ceded or relinquished, shall be fully reimbursed by the United States." A board of commissioners was organized under this compact, for the adjustment of these special accounts between Virginia and the United States. After much difficulty, these accounts were at length adjusted, it is believed about the year 1788, when the United States agreed to allow Virginia, the amount of what had been then disbursed to the troops employed in the reduction and defence of this

territory.

Though this settlement was made under the express provisions of the compact between Virginia and the United States, still, like the general settlement made with all the States under the act of 1790, it did not include the amount for which judgments have since been rendered against Virginia, on the claims of the officers of Clarke's, Crockett's, and Rogers' corps. The explanations which have been already given in relation to the claims for half-pay generally, will suffice to show why the claims of these particular corps were not, and could not have been included in the settlement of the expenses incurred by Virginia in subduing and maintaining the northwest territory. These claims certainly constitute a part of those expenses, as the officers of Clarke's regiment actually subdued the country, while those of Crockett's regiment and Rogers' dragoons, were raised and stationed expressly for its defence.

Judgments have been rendered against the Commonwealth on the claims of these corps for about \$82,626, and the claims which are not yet prosecuted, (and which the State is bound to pay on the principles of the judgments rendered,) are estimated at about \$99,350. Making an aggregate of

\$181,976.*

While Virginia expects the Government of the United States to fulfil its engagements with that fidelity which is due to justice, she seeks no reward for the cession of her northwest territory. This voluntary sacrifice was made with no sordid view to her own advantage; it was the free offering of a spirit which valued the Union and happiness of the States more than wealth or power. No sacrifice is asked or desired in return; it is only expected that you will restore, according to the terms of your own compact, the actual cost of this territory to Virginia—that you will not permit the donor to be burthened with the charges of the title deeds while the estate is

yours.

In ceding this territory to the Union, Virginia was not altogether unmindful of her obligations to her troops. Among other reservations which were necessary to enable that State to fulfil its large engagements for land bounties, 150,000 acres were reserved, which had been previously promised by act of Assembly, to the regiment of Col. George Rogers Clarke. Although the most active measures were adopted by Virginia, both previous and subsequent to the cession, to secure the full benefit of this reservation to these troops, it is believed that a considerable deficiency was ascertained when the grant was located and partitioned among the officers and soldiers of the Illinois regiment. Without having been able to discover the precise extent of this deficiency, your memorialist can only refer to the subject at present, as coming within the scope of his duties, while he hopes hereafter to ascertain and submit the particulars more accurately for your consideration. has understood, from a quarter entitled to credit, that not more than 110,000 or 115,000 acres have been actually located by the troops of the Illinois regiment within the limits of this reserve, leaving a deficiency of 35 or

^{*}See documents herewith exhibited.

40,000 acres. The necessary documents and proofs touching this subject, and in relation to other claims for bounty lands, will be prepared and sub-

mitted as soon as is practicable.

Your memorialist has been charged also with the duty of bringing to your consideration, a claim growing out of expenditures and advances made by Virginia during the late war, which has been deemed just and admissible. Besides the various large sums of money which were borrowed by that State for the public service during the last war, a considerable amount was advanced or loaned for the same use, from the coffers of the State. is believed that you have already recognized the obligation of the United States, to pay the principal of what was advanced from the Treasury of a State, or borrowed by a State for the public service; and that you have paid interest on such sums as were thus borrowed and applied. It is conceived, that interest is equally due on those sums which were advanced by a State from its own funds. If interest has been allowed to the States, on the usual policy, that he who advances capital is entitled to receive a premium for its use from him for whose benefit it is advanced—it would seem that the State of Virginia was equally entitled to interest from the United States on those sums which were advanced from its own funds for the public defence, as on those which were borrowed by the State for the same purpose. The benefit conferred on the United States is as great when the State lends its own money or stocks, as when it lends that which has been borrowed; and the inconvenience to the State is as much in one case as is in the other. The funds of the State which were thus advanced to the United States, were raised by a revenue from the contributions of its citizens; and whether these contributions were made by voluntary loans to the Commonwealth, or by taxes, the capital expended was equally the capital of the State, and equally served to supply the public exigencies.

A statement of this subject, showing the amount of the several advances on which interest is now claimed, and furnishing all necessary explanations,

is herewith exhibited.*

Your memorialist has endeavored to state the several subjects which he has the honor of submitting for your consideration, as briefly and intelligibly as he could. If his narrative has proved tedious in the recital, he trusts you will acquit him of a design to protract it farther than was necessary to present the various subjects involved, so that your judgments might impar-

tially decide on facts.

He asks, in conclusion, that all sums of money which the State of Virginia has paid since the passage of the act of Congress of August 5, 1790, entitled "An act to provide more effectually for the settlement of the accounts between the United States and the individual States," to officers of her State line, or of the continental line, on account of her engagements during the revolution, may be refunded to the Commonwealth; that all sums for which the Commonwealth may still be bound on the same account, may be assumed or adequately provided for by the United States, so as to exempt Virginia from a responsibility which does not properly belong to her; that the deficiency in reservations of bounty lands, made by the State of Virginia on the cession of the northwest territory, may be made good by the United States; and that all interest which is properly due to the State of Virginia on sums of money, or stock, or other funds, advanced for the public service during the late war, may be paid to that Commonwealth by the United States.

No. 1.

Extract from an act, entitled "An act to provide for the appointment of a Commissioner on behalf of this Commonwealth to prosecute certain claims against the United States."—[Passed April 8, 1831.]

Whereas, in the opinion of the General Assembly, the State of Virginia has a valid and substantial claim on the United States, for various large sums of money, which have been paid, and which this Commonwealth may be bound to pay, on account of the services of the troops of our State line during the war of the revolution, and the documents and testimony in relation to the same are dispersed and difficult of access, and it is believed that the public interest will be promoted by the employment of a competent agent, or commissioner, on behalf of the State, to attend to the prosecution of such

claim: therefore,

Be it enacted by the General Assembly, That the Governor of this Commonwealth shall appoint some competent person as commissioner, for and on behalf of this Commonwealth, whose duty it shall be to prepare the testimony and documents touching the claims of Virginia upon the United States, on account of moneys paid, or for which Virginia may be liable, to the officers and soldiers of her State line, during the revolution, their heirs, executors, administrators, or assigns; and it shall furthermore be the duty of such commissioner to attend personally to the preparation and prosecution of such claim or claims, under the direction of the Governor, and to communicate with him, from time to time, as to the progress which may be made therein. The said commissioner shall, in all respects touching his said duties, be subject to the control of the Governor of this Commonwealth; and such commissioner shall, in like manner, be charged with the settlement and recovery of any claims of this Commonwealth remaining unsettled on account of the expenses of the late war, on the terms heretofore prescribed.

No. 2.

EXECUTIVE DEPARTMENT, June 18, 1831.

Sir: I have this day appointed you, and do hereby constitute you an agent, under the act of the General Assembly, of the 8th of April, 1831, to act as commissioner "for and on behalf of this Commonwealth, to prepare the testimony and documents touching the claims of Virginia upon the United States, on account of moneys paid, or for which Virginia may be liable, to the officers and soldiers of her State line during the revolution, their heirs, executors, administrators, or assigns."

I am, sir, respectfully,

Your obedient servant,

JOHN FLOYD.

THOMAS W. GILMER, Esq.
Charlottesville, Virginia.

No. 3.

Extract from resolutions of Congress, of the 16th and 18th of September, 1776, and the 12th of August, and 22d of September, 1780.

"Resolved, That such lands" (continental bounty lands) "are to be provided by the United States, and whatever expense shall be necessary to procure such lands shall be paid and borne by the States, in the same proportion as the other expenses of the war."

No. 4.

Extract from an act of the Virginia Assembly of May, 1779, entitled "An act concerning officers, soldiers, sailors, and marines."

"All general officers of the army, being citizens of this Commonwealth, and all field officers, captains, and subalterns, commanding, or who shall command, in the battalions of this Commonwealth on continental establishment, or serving in the battalions raised for the immediate defence of this State, or for the defence of the United States; and all chaplains, physicians, surgeons, and surgeon's mates, appointed to the said battalions, or any of them, being citizens of this Commonwealth, and not being in the service of Georgia, or of any other State, provided Congress do not make some tantamount provision for them, who shall serve henceforward, or from the time of their being commissioned, until the end of the war; and all such officers who have, or shall become supernumerary on the reduction of any of the said battalions, and shall again enter into the said service, if required so to do, in the same or any higher rank, and continue therein until the end of the war, shall be entitled to half-pay during life, to commence from the determination of their command or service."

No. 5.

Between Christopher Roane, Frederick Woodson, William Armistead, Thomas Quarles, John Fleet, Dudley Digges, Nathaniel Littleton Savage, William Graves, Samuel Tinsley, and Thomas Carter, officers of the State line, appellants, and James Innes, Attorney General, and Jaquelin Ambler, Treasurer, defendants, and John Pendleton, Auditor for Public Accounts, appellee.

The plaintiffs, who were officers in one of the legions raised for defence of the Commonwealth, by an act passed in the spring session of 1781, continued in service, from the time of entering into it, until February, 1783, when they were discharged by the Governor, after which time they were not required again to enter into service.

They, supposing that officers of the Commonwealth's battalions, who were supernumerary by reduction of their battalions before the end of the war, if they were not required to enter into service again, were entitled to half pay during life, by the words of the act of General Assembly, passed in the May session of 1779, concerning officers, soldiers, sailors, and ma-

rines, and also supposing themselves, by the act of 1790, giving compensation of half pay to certain officers of the State line entitled to the same compensation as the law allowed to officers of the battalions, exhibited their claims for half pay, or in lieu of it, the commutation of five years' full pay, to the Auditor for public accounts, who disallowed their claims.

From his disallowance the plaintiffs appealed, separately, each of them stating his case in a petition to the judges of the district court, holden in

Richmond.

That court referred the case to the general court, who certified their opin-

ion in these terms:

"That, under the act of May, 1779, the general officers, field officers, captains, and subalterns, physicians, surgeons, and surgeons' mates, then on duty, or who should afterwards be placed on duty, in the hattalions at that time raised for the continental or State service, were entitled to half pay, unless they failed to serve until the end of the war, or being supernumerary, refused to enter again into the service, on a command to that effect, or unless they were in the service of Georgia or another State, or provided for in this respect by Congress, that the respective laws under which they have been appointed, and the act of 1790, entitle all such persons as are described in the act of 1779, who belong to the State line, and who have been appointed since the passing of the act of 1779, to the like allowance of half pay, provided they served to the end of the war, or being supernumerary, did not refuse to enter again into the service, on a command to do so, and that the troops being disbanded in the month of February, 1783, and the preliminary articles of peace being signed before that period, the officers ought to be considered to have served to the end of the war."

Whereupon the district court adjudged the plaintiffs entitled to the commutation claimed by them, and ordered the Auditor to issue to each petitioner

a certificate accordingly.

From which judgment, on the prayer of the Attorney General for the Commonwealth, an appeal was allowed; and the court of appeals on the 2d day of May, 1792, delivered the following opinion in the case of one of the

petitioners:

"That under the act of Assembly, passed in May, 1779, entitled an act concerning officers, soldiers, sailors, and marines, and all subsequent acts made respecting them, only such of the general officers of the State army, being citizens of the Commonwealth, and such of the field officers, captains, and subalterns, serving in the battalions raised for the immediate defence of this State, and such of the chaplains, physicians, surgeons, and surgeons' mates, as were appointed to the said battalions, being citizens of this Commonwealth, and not being in the service of Georgia, or any other State, and for whom Congress hath not made any adequate provision, and only such of them as actually served thenceforward, or from the time of their being commissioned until the end of the war, unless restrained by being prisoners of war, on parole, or otherwise, and also, only such of the said officers who became supernumerary on the reduction of the said battalions and again actually entered into the said service, in the same or higher rank, having been required so to do, and continued therein until the end of the war, are entitled to half pay during life, under the said acts, to commence from the determination of their command or service, when the same was duly signified to them by the Governor, or executive of this State, and their regiments disbanded in pursuance thereof, after the preliminary articles of peace between America and Great Britain were signed and notified to the Executive of this state, which appears by the proceedings in council in evidence in this case to have been on the 19th day of April, 1783, and the army disbanded in pursuance thereof on the 22d of the said month, and it appearing by the petition of the appellee that he was a supernumerary officer, and discharged as such, on the 9th day of February, 1783, before the said preliminary articles were notified, and the legion to which he belonged disbanded as aforesaid, and that he did not again enter into the service and continue therein until the end of the war, this court is of opinion that he is not entitled to half pay for life, and that the opinion of the general court, and order of the district court thereon, are erroneous;" therefore—

The order of the district court was reversed, and the disallowance by the Auditor affirmed; to which was added this entry; "but this judgment is not to bar or prejudice any future claim of the appellee, made on fuller proof to

the Auditor.'

Several of the parties, whose claims were decided by the court of appeals, not to be maintainable, nevertheless, exhibited the same claims again to the Auditor, supposing the entry subjoined to the judgment of the rever-

sal to have reserved to them liberty to do so.

The claims were again disallowed by the Auditor, and from that disallowance the claimants appealed to the high court of chancery, prosecuting their appeal by way of original bill against the Attorney General, the Treasurer. and the Auditor, who were made defendants, and of whom the last only answered, disclosing, however, nothing more than what appeareth in the foregoing statement of facts. The cause came on before the high court of chancery, by consent of parties, to be heard in October, 1793. The court at first hesitated to interpose in the matter; first, because it seemed proper to be brought before the common law court; and, secondly, because the claims, which the court of appeals permitted to be made again to the Auditor, were permitted to be made on fuller proof; but no proof was now exhibited more than, or differed from, what was exhibited before the court of appeals. The first difficulty was removed by the answer of one defendant: which did not except to the jurisdiction of the court of equity, and by the consent of the other defendants that the cause should be heard on its merits by that court. The other difficulty was removed by this consideration: the facts stated by the claimants in their petitions of appeal to the district court. were all admitted to be true by the Attorney General, who was the proper party to controvert the facts if they had not been true, and whose admission is equivalent to the fullest proof.

Fuller proof being, therefore, impossible, those terms in the reservation subjoined to the reversing judgment, were supposed to have been used inadvertently, and the reservation was understood in the same sense as if it had not contained them; and the court of chancery delivered the following opinion:

"That by the words in the act of General Assembly of the May session, in the year 1779, entitled, an act concerning officers, soldiers, sailors, and marines, 'officers who have or shall become supernumerary on the reduction of battalions, and shall again enter into the service if required so to do, and continue therein until the end of the war, shall be entitled to half pay during life, to commence from the determination of their command of service.' The officers intended to be provided for, were of two classes; one, those who had continued in the service until their battalion was reduced, and their command determined, and were not required to enter again into the service;

and the other, those who, after the reduction of their battalion, were required to enter, and did enter, again into the service, and continued in it until the end of the war; and that the said words ought to be interpreted thus: "officers who have or shall become supernumerary, shall be entitled to half pay during life, to commence from the determination of their command, if they were not required to enter again into the service and refused to do so; and officers who have or shall become supernumerary, and shall again enter into the service, if required so to do, shall be entitled to half pay during life, to commence from the determination of their service;' because, by any other interpretation, the words, 'command or,' in the last member of the sentence, would not only be superfluous, but have no meaning; and because the words, although they may be interpreted in another sense, ought to be interpreted in a sense most beneficial for the officers whom the General Assembly were inviting into their service by offers of gratuities the most liberal in their power to make. But this court is of opinion that, by the latter part of the act of General Assembly, made in the year 1790, entitled, An act giving compensation of half pay to certain officers of the State line. such of the petitioners as belong to the first of the two classes before mentioned, are so distinguished from officers of the other class, that the petitioners are not entitled to half pay by that part of the act, although the court cannot believe that the General Assembly intended to deprive them of it, being unable to divine any reason for the distinction. Nevertheless, this court is of the opinion that, by the former part of the last mentioned act, the officers, who were discharged by proper authority, and not required to enter again into service after the 30th day of November, in the year 1782, that is, in February following, are entitled to their half pay no less than those who were not discharged before the 22d day of April, in that year, to whom the compensation for half pay hath been allowed; because the former may be said, with as much propriety as the latter, to have continued in the service until the end of the war, since they were in the service on the said 30th day of November, when the provisional articles between the United States of America and the King of Great Britain were done, by the seventh article whereof it was agreed that there should be a peace between those parties and their respective citizens and subjects, and that all hostilities should cease; and by the ninth article, restitution was agreed to be made of whatever might be conquered by the arms of either from the other before the arrival of those articles in America: whereas if the end of the war was not before the definitive treaty of peace between the same parties, which was done 3d September, 1783, those officers who were discharged before that day, that is, those who were discharged on the 22d day of April, 1783, had not served until the end of the war;" and decreed the Auditor to allow half pay for life, or, in lieu thereof, * five years' commutation to such of the plaintiffs as should appear to be entitled thereto according to the foregoing opinion, from which decree the defendants, on their prayer, were allowed an appeal.

In justification of this opinion, which differeth from that of the court of

appeals, upon the latter are submitted these remarks.

This opinion of the court of appeals consists of these propositions:

1. Officers who continued in the service until the end of the war are entitled to half pay during life, to commence from the determination of their service.

^{*} This alternative was inserted because the court of appeals, as was said, and seemed admitted, had allowed it in some cases, when the claims for half pay were sustained.

2. Officers who were restrained by being prisoners of war or on parole, or otherwise from continuing in the service until the end of the war, are entitled to half pay during life, to commence from the determination of their command. This proposition is not explicitly stated, but is implied in the opinion.

3. Officers who became supernumerary on reduction of their battalions, and again entered into the service, having been required so to do, and continued therein until the end of the war, are entitled to half pay during life,

to commence from the determination of their service.

4. Such supernumerary officers as did not enter, although they were not required to enter again into the service, are not entitled to half pay during life. This proposition follows from the word "only" in that part of the

opinion from which is formed the next preceding proposition.

5. Officers to be entitled to half pay during life, must have continued in the service until the signature of the provisional articles—here called the preliminary articles of peace between the United States of America and the King of Great Britain—was notified to the Governor of the Commonwealth, and duly signified by him to the officers.

The first proposition is admitted by all, and upon it partly is founded the

decree of the high court of chancery, as is there explained.

The second proposition may be doubted until the statute can be shewn, by which half pay for life was promised to those officers who were hindered by being prisoners of war, or by being on parole, or were hindered otherwise from continuing in the service until the end of the war. But if the proposition be true, the conclusion from it is thought to be opposite to the conclusion drawn by the court of appeals: for if an officer hindered from continuing in service until the end of the war, by being a prisoner or on parole, or hindered otherwise, be entitled to half pay during life, a supernumerary officer who, not being required to enter again into service, is hindered from continuing in the service until the end of the war, no less effectually than the officer who is an immured captive, or is enlarged on parol, seems no less entitled.

The third proposition is true, but the plaintiffs cannot entitle themselves by it, because if they were properly supernumerary officers, they did not, after they became so, enter again into the service.

The fourth proposition is founded, as is conceived, in a misconstruction

of the act of 1779.

Two arguments are stated in the decree of the court of chancery to prove that the act ought to be so expounded as to entitle the supernumerary officers who were not required after the reduction of their battalions, to enter again into the service to half pay during life; first that, otherwise the words "command or," in the act, would have no meaning, as will be manifest to one who reads the act without these words, for he will see if they be left out it hath exactly the meaning which the court of appeals hath given to it with them: whereas the words "command or," applied to supernumerary officers not required to enter again into service, are significant; secondly, that the act, if it could be expounded in two senses, ought to be expounded in the sense which is most beneficial to the officers, for the reason there mentioned. To which, after premising that the act of 1779, in its nature, is a compact between the Commonwealth and the officers, the author of that decree now adds, thirdly, the parties entering into the compact may reasonably be supposed to have treated and concluded in some such form as this:

Commonwealth. We agree to allow you officers who will serve us in our army until the end of the war, half pay during your lives, to commence from the determination of your service.

Officers. We are willing to serve for the stipend you offer; but you may deprive us, or some of us of it, by disbanding your army, or part of it, be-

fore the end of the war.

Commonwealth. If we disband our army or part of it before the end of the war, we will allow to you who thereby become supernumerary, half pay during your lives, to commence from the determination of your respective commands; but upon this condition, which no doubt you will think just, that you shall enter again if we require you to enter again into our service, and continue therein until the end of the war, in which last case your half pay shall commence from the determination, not of your command, but of your service.

Officers. To all this we agree, and accordingly we enter into your service. Whether the act of 1779 ought not to be expounded, as such articles would have been expounded, is referred to the candid and judicious; fourthly, where one party hindereth another from performing a duty by which he would earn a reward, the hindrance is in fraud of the party willing to perform, from which fraud he who practiseth it ought not to derive benefit, nor ought the other to lose that to which he would otherwise have been entitled. And, in this case, the Commonwealth hindered the officer from performing the duty by which he would have earned a reward; and, fifthly, the words of the act, "if being required again to enter, they again do enter into the service, and continue in it until the end of the war," seem the denunciation of a penalty for breach of a duty, the half pay would be earned by service before the officers became supernumerary; but to secure their future service, if it should be requisite, they should forfeit the half pay if they failed afterwards to perform another duty enjoined. This duty was again entering into the service, if they were required, and continuing in it until the end of the war; but if they were not required again to enter into the service, no duty was enjoined to be performed, and consequently, by failure to perform the duty, no forfeiture was incurred.

Therefore, that the plaintiffs, if they had been officers in the battalions for whom the act of 1779 provided, upon the supposition that they were supernumerary officers, would have been entitled to half pay, is thought to be

evinced.

But they are believed not to have been comprehended in that act, nor to be entitled to the half pay which it allowed to officers in the battalions, unless it be by the act passed in 1790, giving the compensation of half pay to

certain officers of the State line.

The words of that act are, "that the same compensation of half pay should be extended to those officers of the State line, who continued in actual service to the end of the war, as was allowed to the officers of the continental line; and, also to those who became supernumerary, and being afterwards required, did again enter into actual service, and continued therein to the end of the war."

The act, in the latter part of it, includeth supernumerary officers, who did again enter into actual service only, and consequently doth not include the plaintiffs, who confess themselves not to have entered again into the service.

If, then, the plaintiffs be entitled to half pay, it must be by the former part of this act; that is, they must have been not supernumerary officers, but

officers who continued in actual service to the end of the war: so that whether this can be predicated of them, is the question which will lead us

to consider the fifth proposition of the court of appeals.

The plaintiffs are admitted to have been in actual service before and on the 30th day of November, 1782, when the provisional articles were done, and to have continued in the service until February afterwards, when they were discharged by order of the Executive.

If the war ended when those articles were done, the plaintiffs, by the terms of the act, by the terms of the compact, if the act of 1779 be in the nature of a compact, and by the terms of the act of 1790, were entitled to their half pay, to commence from February, 1783, the determination of their actual service: the provisional articles prove the war to have ended by

that act.

The articles, indeed, were not to be conclusive, until the terms of a peace should be agreed upon between Great Britain and France; but when those terms were agreed upon, the articles were conclusive, and they were an act of the day on which they were done, not of the day on which the terms of peace between Great Britain and France were agreed upon. If the terms of peace between Great Britain and France had not been agreed upon, the provisional articles would not have been in force from the beginning; this being true, its converse, if the terms of peace between Great Britain and France were agreed upon, the provisional articles were in force from the beginning, must also be true; yea, the court of appeals themselves, in this opinion, admit the war to have ended by those articles: For, if the war was not ended by the provisional articles, it was not ended before the definitive treaty in September, 1783;* but the court of appeals have allowed those officers who were in service until April, 1783, to be entitled to half pay, and therefore the war to have ended before the definitive treaty, and consequently to have ended when the provisional articles were done.

If the war was ended by the provisional articles, why are not the officers who continued in the service until the signature of those articles, including the plaintiffs, entitled to their half pay? because, say the court of appeals, officers, to be entitled to half pay, must have continued in the service until the signature of the articles was notified to the Governor, and signified by him to the officers. \(\pm\$\pm\$ Did the Commonwealth agree with the officers that they should not be entitled to half pay, unless they would continue in service until such notification and signification? Do the statutes declare so? When the statutes had enacted that officers, who continued in service until the end of the war, should receive half pay during life, can any court, without assuming the power to change the law, determine that the

† This is not a mere argumentum ad homines, but is conclusive in this case; the Supreme Court, by determining those officers to be entitled, who did not continue in the service until

the definitive treaty, having implicitly decided the war to have ended before.

^{*} No man will pretend that the proclamation by the Governor of Virginia, one of the thirteen confederated States, could end the war which was prosecuted by the British King against all those States united; and if the war ended, not by the Governor's proclamation, it must have ended by the provisional articles or the definitive treaty.

[‡] By this doctrine, the officer who was unluckily discharged a few weeks, or a few minutes, before official notification of the peace to the Executive, instead of being gratified by enjoyment of those delectable things, the promise of which had tempted him to enter into the service of the Commonwealth, and encouraged him to continue so long as they would permit him to continue, in their service, with the thirst and appetite of Tantalus,

officers shall not receive half pay, although they shall have served until the end of the war, unless they shall moreover have continued in the service until a notification to the Governor that the war was ended; and this too, notwithstanding the officers continued in service until they were discharged by the Governor, and were not required to enter into it again? And hath any court power to change the law? If these questions be answered negatively, as probably they will be, the principal question, namely, whether officers, who continued in service until the provisional articles were done, and afterwards until they were discharged, be entitled to half pay, must be answered affirmatively.

No. 6.

Extracts from an act of Congress, entitled "An act making provision for the debt of the United States;" passed Aug. 4, 1790.

"And, whereas, a provision for the debts of the respective States, by the United States, would be greatly conducive to an orderly, economical, and

effectual arrangement of the public finances:

That a loan be proposed to the amount of twenty-one million and five hundred thousand dollars, and that subscriptions to the said loan be received at the same times and places, and by the same persons, as in respect to the loan hereinbefore proposed concerning the domestic debt of the United States; and that the sums which shall be subscribed to the said loan, shall be payable in the principal and interest of the certificates or notes, which, prior to the 1st day of January last, were issued by the respective States, as acknowledgments or evidences of debts by them, respectively, owing; except certificates issued by the Commissioners of Army Accounts, in the

State of North Carolina, in the year 1786.

Provided, That no greater sum shall be received in the certificates of any State than as follows, that is to say: In those of New Hampshire, three hundred thousand dollars; in those of Massachusetts, four million dollars; in those of Rhode Island and Providence Plantations, two hundred thousand dollars; in those of Connecticut, one million six hundred thousand dollars; in those of New York, one million two hundred thousand dollars; in those of New Jersey, eight hundred thousand dollars; in those of Pennsylvania, two million two hundred thousand dollars; in those of Delaware, two hundred thousand dollars; in those of Maryland, eight hundred thousand dollars; in those of Virginia, three million five hundred thousand dollars; in those of North Carolina, two million four hundred thousand dollars; in those of South Carolina, four million dollars; in those of Georgia, three hundred thousand

And provided, That no such certificate shall be received, which from the tenor thereof, or from any public record, act, or document, shall appear, or can be ascertained, to have been issued for any purpose, other than compensations and expenditures for services or supplies towards the prosecution of the late war, and the defence of the United States, or some part thereof, during the same."

"That so much of the debt of each State as shall be subscribed to the said loan, and the moneys (if any) that shall be advanced to the same pursuant to this act, shall be a charge against such State, in account with the United

States."

No. 7.

An act to provide more effectually for the settlement of the accounts between the United States and the inaividual States.

Be it enacted, &c. That a board, to consist of three commissioners, be and hereby is established, to settle the accounts between the United States and the individual States; and the determination of a majority of the said commissioners on the claims submitted to them, shall be final and conclusive; and they shall have power to employ such number of clerks as they

may find necessary.

That the said commissioners, shall, respectively, take an oath or affirmation, before the Chief Justice of the United States, or one of the associate or district judges, that they will faithfully and impartially execute the duties of their office. And they shall, each of them, be entitled to receive at the rate of two thousand two hundred and fifty dollars per annum, payable quarter yearly at the Treasury of the United States, for their respective

services.

That it shall be the duty of the said commissioners to receive and examine all claims which shall be exhibited to them, before the first day of July, 1791, and to determine on all such as shall have accrued for the general or particular defence, during the war, and on the evidence thereof, according to the principles of general equity (although such claims may not be sanctioned by the resolves of Congress, or supported by regular vouchers,) so as to provide for the final settlement of all accounts between the United States and the States individually; but no evidence of a claim heretofore admitted by a commissioner of the United States, for any State or district, shall be, subject to such examination; nor shall the claim of any citizen be admitted as a charge against the United States, in the account of any State, unless the same was allowed by such State before the 24th day of September, 1788.

That it shall be the duty of the said commissioners to examine and liquidate to specie value, on principles of equity, the credits and debits of the States already on the books of the Treasury, for bills of credit, subsequent

to the 18th of March, 1780.

That the commissioners shall debit each State with all advances which have been or may be made to it by the United States, and with the interest thereon, to the last day of the year 1789; and shall credit each State for its disbursements and advances, on the principles contained in the third section of this act, with interest to the day aforesaid, and having struck the balance due to each State, shall find the aggregate of all the balances, which aggregate shall be apportioned between the States agreeably to the rule hereinafter given; and the difference between such apportunments, and the respective balances, shall be carried in a new account to the debit or credit of the States, respectively, as the case may be.

That the rule for apportioning to the States the aggregate of the balances first abovementioned, shall be the same that is prescribed by the Constitution of the United States, for the apportionment of representation and direct

taxes, and according to the first enumeration which shall be made.

That the States who shall have balances placed to their credit on the books of the Treasury of the United States, shall, within twelve months after the same shall have been so credited, be entitled to have the same funded upon the same terms with the other part of the domestic debt of the United States; but the balances so credited to any State shall not be transferable.

That the clerks employed, or to be employed by the said commissioners, shall receive like salaries as clerks employed in the Treasury Department.

That the powers of the said commissioners shall continue until the first day of July 1792, unless the business shall be sooner accomplished. [Approved, August 5th, 1790.]

DIVIDIO ON SERIES SWISSE DOWN A SERVICE

No. 8.

The Comptroller of the Treasury having transmitted to me for entry in the books of the Treasury, the final report of the board of commissioners appointed to settle the accounts of the several States with the United States; also a letter from said commissioners to the President of the United States, dated June 29, 1793; and a letter from Tobias Lear to the Secretary of the Treasury, dated August 19th, 1793; the following records are made in pursuance of the Comptroller's instructions contained in his letter of the 26th of August, 1793, which are to take effect from the 29th June, 1793, the date of said commissioners' report.

(A.)

Copy of the Commissioners' letter to the President of the United States.

Office of Accounts, June 29th, 1793.

Sir: We have the honor to submit to you the enclosed report upon the claims of the several States against the United States.

The difficulties we had to encounter, owing to the magnitude, intricacy, complexity and variety of the claims, have been numerous. These, added to the loss of papers and other accidents, together with the peculiar nature of some of them, and the variety of paper which circulated during the war, has rendered it impracticable for us to follow with such minute precision, the several charges, as might be expected in the settlement of the concerns of individuals.

We conceived that a speedy adjustment, having substantial justice for its basis, would best promote the end for which we were appointed: we have therefore used our utmost endeavors to effect it, and we trust that the principles upon which we have proceeded, considered as a system, will, in as great a degree, produce the thing aimed at, as could be done by any others; at least we can with great truth declare, that, in forming them, this was our intention and only view, and that they are the best our judgments could devise. We are therefore not without hope that our decision will meet the approbation of our fellow citizens.

With all due deserence,

We are, sir, your ob. servants,

WM. IRVINE, JOHN KEAN, WY LANGDO WY. LANGDON. carl other med most omes out waren

(B.)

The report of the Commissioners.

OFFICE OF THE COMMISSIONERS OF ACCOUNTS,

Philadelphia, June 29, 1793.

The commissioners appointed to execute the several acts of Congress, to provide more effectually for the settlement of the accounts between the United States and the individual States, report that they have maturely considered the claims of the several States against the United States, and the charges of the United States against the individual States.

That they have gone through the process prescribed in the 5th section of the act of Congress, passed the 5th day of August, 1790, the particulars whereof will be found in book A, lodged with the papers of this office in the Treasury Department, and find that there is due, including interest, to

the 31st day of December, 1789,

TO THE STATE OF

New Hampshire, seventy-five thousand and fifty dollars;

Massachusetts, one million two hundred and forty-eight thousand eight hundred and one dollars;

Rhode Island, two hundred and ninety-nine thousand six hundred and eleven dollars;

Connecticut, six hundred and nineteen thousand one hundred and twentyone dollars;

New Jersey, forty-nine thousand and thirty dollars;

South Carolina, one million two hundred and five thousand nine hundred and seventy-eight dollars;

Georgia, nineteen thousand nine hundred and eighty-eight dollars. And that there is due, including interest to the 31st day of May, 1789,

FROM THE STATE OF

New York, two millions seventy-four thousand eight hundred and forty-six dollars;

Pennsylvania, seventy-six thousand seven hundred and nine dollars; Delaware, six hundred and twelve thousand four hundred and twenty-eight dollars;

Maryland, one hundred and fifty-one thousand six hundred and forty dollars; Virginia, one hundred thousand eight hundred and seventy-nine dollars; North Carolina, five hundred and one thousand and eighty-two dollars:

Which several sums they, by virtue of the authority to them delegated, declare to be the final and conclusive balances due to and from the several States.

WM. IRVINE,
JOHN KEAN,
WOODBURY LANGDON.

(C.)

Tobias Lear's note to the Secretary of the Treasury.

United States, August 19, 1793.

By the President's command, T. Lear has the honor to transmit to the Secretary of the Treasury, the final report of the commissioners for settling the accounts between the United States and the individual States, together with the letter accompanying the same from them to the President.

T. Lear is moreover directed by the President to observe to the Secretary, that the enclosed report was left at the President's house during his late visit to Virginia, and therefore did not get to hand till his return to this city on the 11th July. It was then sent to the office of the Secretary of State to be there deposited, and copies thereof prepared to be laid before Congress at their next meeting, there being nothing express in any law respecting this subject, as to the place where it should be lodged; the implication to that effect was not particularly noted until the matter was mentioned to the President by the Secretary of the Treasury. The report was then sent for from the office of the Secretary of State, but it having been put away by Mr. Taylor, the principal clerk, who was then gone to New York, it could not be found until his return to day.

The President has thought it proper that these circumstances should be noted, to account for the delay in depositing the report, but he presumes no inconvenience will arise therefrom, as the doings upon it may take effect in

course from its date.

TOBIAS LEAR, Sec'y to the Pres't of the United States.

Final settlement of the State accounts by the Board of Commissioners appointed for that purpose, under the act to provide more effectually for the settlement of the accounts between the United States and the individual States.

DR. To sundry accounts of the States respectively:

For the following *credits* to the several States founded upon the said report of the commissioners, and the minutes of their proceedings in the words following:

At a meeting of the board, June 27th, 1793, present William Irvine, John

Kean, Woodbury Langdon, commissioners.

The board took into consideration the several claims of the States admitted by the examining clerks; also those which were suspended in order to make a final settlement and adjustment of the gross amount to be admitted to the credit of each State: whereupon, resolved, that there be carried to the credit of the State of

Diale of					
New Hampshire		-	110-1063	M - 1 71	\$4,278,015 27
Massachusetts		32 4000	- A	-	17,964,613 03
Rhode Island	70 TUAC	73 - 215		men-mail	3,782,974 46
Connecticut	-	-		u ya-b di	9,285,737 92
New York	-	-	-	-	7,179,982 78
New Jersey	-	130 1330			5,342,770 52
Pennsylvania		Marie Inc	AND DESCRIPTION OF THE PERSON	-	14,137,076 22
Delaware	100 20340		an arthur	2100-20230	839,319 98
Maryland	# .35 - 15-16	935 - 010	rim-ned	TEDAL TRANS	7,568,145 38
Virginia	0001-000	10 10	media rot	加加斯	19,085,981 51
North Carolina	-	10.0	013-17019	to 28 %	10,427,586 13
South Carolina		physical control	Maril Act	lead more	11,523,299 29
Georgia		99-99	THE . IT.	- L	2,993,800 86
the second secon					

114,409,303 10

Which several sums are in full of all claims made for the disbursements and advances of the said States, with the interest due thereon, to the 31st December, 1789, and which were exhibited in conformity to the act of Congress of the 5th day of August, 1790.

Sundry accounts of the States respectively,

DR.

To final settlement of the State accounts by the Board of Commissioners appointed for that purpose under the "act to provide more effectually for the settlement of accounts between the United States and individual States."

For the following debits to the several States, founded upon the said report of the commissioners, and the minutes of their proceedings of the 27th

June, 1793, in the words following:

The board also took into consideration the advances made by the United States to the several States, which have been returned to them by the Treasury Department, and are charged in the books of the Treasury, the Quartermaster's, Commissaries', Naval Hospital, and Clothing Departments: Where-upon, resolved that there be carried to the debits of the States of

New Hampshire	-	-	-	-	1,082,954	02
Massachusetts	-	-	-	•	6,258,880	03
Rhode Island	OC 304-	A Susta		- 1	1,977,608	46
Connecticut				-	3,456,244	92
New York	-			-	1,960,031	78
New Jersey		-		-	1,343,321	52
Pennsylvania	-	-		-	4,690,686	22
Delaware	NEW ST	misson h	September 6		229,898	98
Maryland	Leans B	densy 28	adi ot a	tikana_g	1,592,631	38
Virginia	glody h	apacate.	und the	LESSED DE	3,803,416	51
North Carolina	-	-	-	-	3,151,358	13
South Carolina	serie P	MI, MI	Laune	rapod out	5,780,264	29
Georgia	-	Property	ramos.	(00 13/-1)	1,415,328	86

36,742,625 10

Which several sums are in full of all advances made by the United States to the several States, with the interest due thereon to the 31st December, 1789, in conformity to the act of Congress, passed the 5th day of August, 1790, and for certificates of the several States, received on loan by the United States, in compliance with the acts of Congress of the 4th day of August, 1790, and of the 8th day of May, 1792.

Sundry accounts of the States respectively, Dr. To final settlement of the State accounts, &c.

For the following debits to the several States founded upon the said report

of the commissioners and their minutes aforesaid, viz:

The "board also took into consideration the return made by the Secretary of State, containing the enumeration of the inhabitants of the United States, and by the rule prescribed by the constitution, declare that the whole population of the United States, for the purpose of apportioning the aggregate of the balances by, is 3,530,393 souls, and that the number in each State, by the same rule, is,"

New Hampshire	489 - 100	4551455			141,822
Massachusetts	-		4	\-\-	475,327
Rhode Island -	-1966				68,446
Connecticut -			85	-	236,841
New York -	-10	Johnson		-	331,590
New Jersey -		-	4-	-	179,569
Pennsylvania	-	-	-		432,879
Delaware -	-	-	-	-	55,540
Maryland -	-	-	_	-	278,514
Virginia -	- 4	-		-	699,265
North Carolina	-	-	-	2 2	353,523
South Carolina -	- 636	-	-	-	206,235
Georgia -	-	-	-		70,842
					\$3,530,393
					AND THE RESIDENCE OF THE PARTY

The whole amount of the advances, &c. made by the United States, being deducted from the gross admissions, leaves the aggregate of the balances, which balances are ascertained by debits made upon the enumeration, and are as follow, and agree with the entries by said commissioners, viz:

			STATE OF THE PARTY		
New Hampshire	-	-		-	3,120,006
Massachusetts				-	10,456,932
Rhode Island	•		-	-	1,505,755
Connecticut	an	-	-	-	5,210,372
New York	-	-		-	7,294,797
New Jersey		-		-	3,950,419
Pennsylvania		-	-	-	9,523,099
Delaware	- B	-	-	-	1,221,849
Maryland			- ,	-	6,127,154
Virginia	-	-	- 1	cha	15,383,444
North Carolina	-	-	•	-	7,777,310
South Carolina	-	-	-		4,537,057
Georgia	-	90	-	-	1,558,484
					\$77,666,678
		The state of the s			

Sundry their old accounts,

D_R. To sundry their new accounts:

For the balances due from the United States to sundry of the States, upon

the principles of the settlement made by the commissioners, viz:

"The whole amount of the advances, &c. made by the United States, being deducted from the gross admissions, leaves the aggregate of the balances, which being apportioned among the States on the principles contained in the act of Congress. 'to provide more effectually for the settlement of the accounts between the United States and the individual States,' and those apportionments being compared with the nett balances, leaves the amount due to or from a State," which are hereby declared to be as follows:

		-		
New Hampshire,	balance due	-	-	75,055
Massachusetts	· do	-	-	1,248,801
Rhode Island	do	-		299,611
Connecticut	do	-	-	619,121
New Jersey	do	-	- 30	49,030
South Carolina	do	-		1,205,978
Georgia	do			19,988
				Character Services

Sundry their new accounts,

To sundry their old accounts:

For balances declared to be due to the United States by sundry of the States, by the commissioners appointed to settle the accounts of the United States with individual States as aforementioned:

New York	0.00	00.0	00.	प्राप्त-प्रवर्धन	2,074,846
Pennsylvania				SECTION O	76,709
Delaware	10.00	-	SEE !	And the state of	612,428
Maryland	-		-	2.61 × 1.021	151,640
Virginia	- 1				100,879
North Carolina	60 Co 200 C	2	- 1 - 1 m	-	501, 082

Sundry State accounts,

Dr. To interest on the unsubscribed balances of assumed debt:

For twenty-nine thousand one hundred and fifty-seven dollars seventy-four cents, paid by the respective loan officers to several of the States, being for interest on the unsubscribed balances of the assumed debt arising on the first quarter of the year 1792, and which, by an endorsement by the commissioners for finally settling the accounts betwixt the United States and the individual States, "was received too late, the entries and calculations being made, no alteration could have been made so as to have finished the business in due time."

New Hampshire	5-				527,07
Connecticut	H - H		_		1,407,42
Pennsylvania	19.		- 21	raseness.	13,982,14
Maryland	-	-	- 60	migraging of	4,560,19
Virginia	1000	-	Hono	- 4	8,680,92
					\$29,157 74

TREASURY DEPARTMENT,

REGISTER'S OFFICE, June 15, 1830.

I do hereby certify that the foregoing report of the Board of Commissioners appointed to settle the accounts of the several States with the United States, is truly taken from the records of the Revolutionary Government, (Journal, page 2,601.)

T. L. SMITH,

Reg. Treas U. S.

ABSTRACT of the balances due to and from the several States, on the adjustment of their accounts with United States, by the general Board of Commissioners appointed for that purpose, under the several acts of Congress for the final settlement of the State accounts; per their report of the 27th of June, 1793.

New York,				14.40.00		-							
New York,			ved the ith		the gett ump	2	The state of the s	D of in			due by States.	of the ses' debt to to the 13 the act the act at, 1790.	Amount of debt fund- ed by each State under the said sec- tion.
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REGISTER'S OFFICE, Feb. 9, 1831.

T. L. SMITH, Register.

No. 9.

[Nore.—It is deemed unnecessary to print all the decisions of the Court of Appeals in 1830, and therefore the opinion of Judge Coalter has been selected, as presenting the whole subject in a full and fair point of view. The decisions of the court in other cases, and the opinions of the other Judges, rendered in the case of Lilly, (from which the following is extracted) may be seen by reference to Leigh's Reports, Vol. 1st, p. 516 to 525.]

Coalter, Judge. —This is a case of great consequence to the State, as well as to the individual who is the appellee in the case, inasmuch as it involves the interesting and much agitated question, whether a supernumerary officer of the revolutionary army, in the State line, who was never called into service after he became supernumerary, is entitled to half-pay, under the act of 1779?

Lilly, the intestate of the appellee, was a Captain in the navy, commissioned before the adoption of the Constitution, in January, 1776; and also by the Governor, afterwards, in August, 1776. He died in 1798, and administration was granted to John Chowning, (who intermarried with his daughter) in February, 1826, who soon thereafter, exhibited his claim to the Auditor.

The attorney for the Commonwealth, has pleaded the statute of limitations, as a bar to the claim; and has also relied on the lapse of time, as evidence of payment, or abandonment of claim. As to the former; as the claim rests upon the laws of the land, and the commission under the seal of the Commonwealth, without examining the other objections taken to the plea, I think it cannot be pleaded as an absolute bar to the claim. As to the presumption of payment, I think the detail which will be given hereafter. of the resistance of the State, for a long time, to all claims for half pay. even in case of service during the war, will furnish conclusive proof that he could not have been paid. And as to abandonment of his claim, he may have done so, in despair of obtaining it; but there is no evidence that he ever doubted of its justice. In May, 1784, he joined with the other officers of the army and navy, in a strong memorial and remonstrance to the Legislature, against the resolution of December preceding, which inhibited the Auditors from issuing warrants for half pay, according to the lists certified to them by the Executive, as their guide in issuing such warrants, but without success. He witnessed the struggle carried on by many of those officers, before the courts of justice, in the years 1791, 1792, and 1793, (as will hereafter be in some measure detailed,) and soon after sunk into his grave unrewarded, if he was entitled to it, for those meritorious services, which the witnesses concur in saying he rendered during the war.

I am strongly inclined to think that Captain Lilly served from 1776, until after the 31st March, 1783, on which day the Governor having laid before the Council, information from our own delegates in Congress, that news of a general peace had been received, and that Congress had recalled her armed naval commissions, he is advised to discontinue the armaments for bay defence, and dismiss the navy. I shall not, however, go into the examination of those circumstances which satisfy me of the great probability of this fact; nor will I demonstrate, as I think I could, that he served at least until the navy was nearly demolished, being reduced to a single vessel, the look out boat Liberty, by the act of November session, 1781. And although, after that, it was somewhat increased for bay defence, and so continued until April, 1783, yet I am now going on the admission that

Lilly did not serve after the great reduction above spoken of. After the reduction of York, the enemy were shut up in their strong holds in New York and Charleston, so that, with the exception of a contemptible naval force which occasionally infested our waters, we had nothing to fear until Great Britain should fit out a new armament against us. This was not expected, inasmuch as Sir Guy Carleton, very soon after that event, notified us that a commissioner had gone to Paris, authorized to negotiate a general peace on the basis of American independence. Until this should take place, however, it was important to keep on foot the continental troops; and, indeed, to fix up the quotas of the States in that line, at the same time hat prudence required a diminution of our corps for State defence, in order to economize our means for a future struggle, should that become necessary: the probability of which, however, was daily diminishing. In pursuance of this policy, the Legislature, at the November session, 1781, (10 Hen. Stat. at large, 499,) directed a reduction of the officers of the State line, and a consolidation of the troops into one corps, &c. which being effected, many officers were rendered supernumerary; and this course was ordered to be pursued from time to time, as the time of service of the troops expired, which were not to be recruited by new levies; but, on the contrary, laws were passed authorizing enlistments to be made from the State line into the continental; and, finally, such of the cavalry as had not re-enlisted were ordered to be discharged; so that, on the last arrangement of the troops by Colonel Dabney, in February, 1783, very few officers remained in his legion who could serve, literally, to the end of the war. As to the navy, the act above referred to, reciting that it was necessary to husband the resources of the State with the utmost economy; and, since our finances did not admit of putting the navy on a footing productive of any public benefit adequate to its expenditure, directs the officers of every denomination to be reduced, except so many as might be necessary for the command of the look-out boat Liberty. This act had been preceded by one of May, 1780, (10 Hen. Stat. at large, 297,) which recites, that, whereas it is necessary that no officers should be retained in the marine department but such as are properly qualified; to effect which reform, the Governor is directed to constitute a board, to consist of the Commissioners of the Navy, and six of the captains, the most approved for their ability, who, having been first fixed in their command, should perform that duty. The Executive was to select these, and fix them in their command, that they might, with impartiality, proceed to the delicate duties of their appointment. This board was constituted, and made its report, and I have no doubt but that Captain Lilly, who was not only one of the oldest, but, as all the testimony establishes, among the most meritorious of the corps, was a member of this board.

The Legislature, furthermore, during the same session of 1781, and after the act reducing the army and navy as aforesaid, passed the act (10 Hen. Statutes at large, 462,) for adjusting the pay and accounts of the officers and soldiers of the Virginia line on continental establishment, and also of the officers, soldiers, sailors, and marines in the service of this State; in which, amongst other things, it is provided, that, whereas, by the reductions of battalions and corps in the State service, a considerable number of officers have become supernumerary, a return of all the State officers shall be made; and the Executive was thereby empowered and required to set on foot proper inquiries to discriminate such officers as, by unworthy conduct, or by any means whatever, he thought unfit to be considered as entitled to halfpay.

This discrimination was made, in part, early in 1782. That which sifted the navy had already been made, as above stated. The Legislature, therefore, when they come to speak of the navy in this act, say that the officers of the navy, as they stand arranged by a late regulation, shall be entitled to the same advantages as the officers belonging to this State in the land service. The act of 1779, it is admitted on all hands, promises half pay to the officers, as well of the continental as State line, who continued in the service to the end of the war. It is true, the officers of the navy are not expressly mentioned in this act; but many subsequent acts, either to be taken as explanatory of this act, or as substantive provisions, extend the same benefit to the navy, as has been decided by us in Markham's case; so that officers of the navy are equally entitled with officers of the State line. The supernumeraries contemplated by the act of 1779 were such as were unavoidably thrown out of service by the necessary reduction of the corps, until they could be reinstated by new levies; not such as became so in consequence of a great victory, changing the whole face of affairs, and, in fact, putting an end to the war, as the capture of York did; after which

new levies were not desirable, but the reverse.

What is meant by service to the end of the war? In the case of privates, it is often said, if you serve to the end of the war, unless sooner discharged. This form of expression is also sometimes used as applicable to officers. Thus, the resolution of Congress of the 16th September, 1776, gave a land bounty to the officers and soldiers who shall engage in the service, and continue therein to the close of the war, or until discharged by Congress. Supposing this to be a contract between the State and her citizens, the law of contracts is, that, if there is a precedent condition to be performed by the plaintiff to entitle him to his reward, and the defendant pleads that he has not performed it, it is a good replication to say, I was ready and offered to perform, but you prevented the performance. But it has been argued, that there was no contract, because there was no mutuality; the officer not being obliged to serve, but at liberty to resign; and that half-pay was a mere gratuity, in which case, a man, to entitle himself to a gratuity, must show strict performance, substantial performance not being enough. The doctrine on this last point is this: If A owes B 100 dollars, and B says to him, if you will pay me 90 dollars on or before a given day, I will release you from the debt, and A pays him on that day 89 dollars only, he cannot claim to be released; but suppose B had dispensed with the payment of the one dollar for his own convenience, or obstructs the payment of it, or refuses to receive any more than the 89 dollars, although the party is ready and offers to pay the whole. But I deny that half-pay was a gratuity. The Government had failed to pay its officers according to original stipulation. The paper money had depreciated long before the act of 1779, to such a degree that it did not afford the officer the necessaries of life, so far from being a compensation for toil and peril. This is matter of history, and is also proved by the legislation of the country. Something was due, in justice, on this account, to those who had thus sustained loss. Besides, if something is not done to place them on a better footing in future, the veteran officer must retire, and new ones cannot be procured. Amongst other things, therefore, the offer of half-pay was made. It was mainly intended, as all know, to keep the veteran officer in the field. The case, then stands thus: A contracts to pay B so much per day to reap for him until the end of his harvest, and it is agreed or not that B may quit when he pleases; but, if he continues to the end, he is to receive five dollars extra. The evening of the last day arrives, when A, for his own convenience, tells B he will excuse him from reaping the last handful, and binding up the last sheaf: it is for my interest, says he, that you should now quit my service, and depart from the field; and B does so quit. Has he served to the end of the harvest within the meaning of the contract; and is he, or is he not, entitled to the five dollars? Such, it seems to me, is the true question between the State, and such of her officers, especially the navy and the corps at York, who served as long as the State wished their services; which this difference, that, at the very time of these transactions, this ulterior reward of half pay was recognized and acknowledged to be just by the Government, as well

legislative as executive, as will hereafter be more fully seen.

But it has been said, (and this court in their decisions hereafter noticed, puts it on that ground,) that the war did not end until the proclamation of peace, and that this alone was the end of the war, as meant by the act of 1779. It is true, that between nations, and according to the laws of nations, as I understand, war ends at different times and place, according to notice, &c., after which acts of war are criminal. Thus, I presume, on the signature of the preliminary articles at Paris, and when that was made known in England and France, (as it must have been long before it was made known here,) acts of war would have been as criminal there, as they would have been here, after the same event was made known here. very well, between the belligerents and their respective subjects and citizens; but I am greatly mistaken if it has any thing to do with the true construction of the contract between the State and her citizens, and the questions of law arising under it as between those parties. Can it be supposed that the law intended to reserve to the State the power, as soon as it was believed, from the course of events, that the war was substantially at an end, nay, after it was known to be so, and within a few days before it is proclaimed, to discharge the army, leave the officers without a command, and direct them to retire from the field; and then say to them, you have not served to the end of the war? Surely, this was not the understanding of either party to this contract. The fair, natural equitable, and legal understanding of it is, to the end of the war, unless sooner discharged; discharged, not for your crime or fault, but because it is our interest to discharge you. wish to save expense to the State, being now satisfied that your services are no longer wanted. Of this we are the proper judges; you have nothing to do with it, and cannot resist it, without a violation of law, discipline, and good order.

This principle will be shown hereafter to be at the foundation of the claims of the supernumeraries, under the act of 1779: at present, I am considering it in relation to those, and especially the navy, whose services were dispensed with as no longer wanted, and to save expense to the State. But the officers of the navy stand even on a higher ground, it seems to me, than this argument places them. They had been put under the ordeal, sifted, and cleansed, before the act of 1781, above noticed, and those who remained purged from the chaff, were recognized, as it were by name, in the act of 1781. It was supposed that that arrangement was then extant; but it turned out that it had been lost or destroyed during the invasions of Arnold or Philips, in 1781. When the Executive, therefore, came to carry that act into effect as to the State line, in order to purge and purify it also, this loss was doubtless discovered; and, in order that there should be a pro-

per list to guide the Auditors in issuing warrants to the navy also, it was ordered that the two senior officers of the navy should unite with the field officers, in order to make out these lists. The officers of the navy did not attend, no doubt under the idea that the previous arrangement, expressly recognized in the act, rendered it unnecessary, and not knowing of the loss of that list. Afterwards, however, in May, 1784, another board was formed, consisting of two field officers, and of Commodore Barron and Captain Lilly, to perform this duty as to the navy. The Executive surely would not have appointed them, had there been a doubt, as to the justice of their claims to half pay. It was probably known that Lilly was one of the original six captains, who were fixed in command by the Executive on the This board did not go into an original scrutiny as to the officers of the navy; but reported a list, which they say, according to the best evidence they could procure, is agreeable to the arrangement of the officers of the navy next preceding the fall session of Assembly in 1781, and that the officers named in that list, have always behaved themselves in such a manner as to be justly entitled to all the emoluments given by law to the officers of the State navy, except one officer, (Lieutenant Gray,) who, they say, they are informed, has since, (viz: in 1783,) misbehaved, &c. Thus they not only furnish the substance of the original arrangement, but show that no subsequent misconduct, except as above, had occurred to deprive the parties of their claim to half pay. It was, of course, certified to the Auditors as their guide in issuing certificates for half pay; there being no doubt in the minds of the Executive, at that day, but that they were entitled to half pay. On this list are, James Barron, Commodore; Richard Barron, Captain, commissioned January 6, 1776; Thomas Lilly, Captain, commissioned January 14, 1776; and others. In all, only one Commodore, eleven Captains, four of whom were then dead, and five Lieutenants, of whom one (Gray) was dead, including, I presume, the marines and

But if I am wrong in supposing that Captain Lilly had served to the end of the war, within the true meaning of the act of 1779; and also wrong in the opinion, that he is to be considered as entitled to half pay under the the act of 1781, he being one of those officers in the list or arrangement lately made and provided for, as it were personally and by name, in that act; then, he must at least be a supernumerary officer of the navy; and if the supernumerary officer of the State line is entitled to half pay, he must be also.

It is alleged, that this question is closed and shut up by two decisions of this court, on the very point. It will be recollected that, in May, 1783, the Legislature directed the Auditors to issue warrants for half pay to the officers, both of the State line and of the navy, and make a return to the next Legislature, that funds may be provided, &c. At the December session of 1783, however, the Legislature, no doubt finding that funds had not been provided, and that they had been unable, by any means then in their power, to support the credit of the warrants they had already issued to the officers for their pay and depreciation, as settled under the above act of 1781, and which had got almost to as low an ebb as paper money itself, and possibly wishing to see whether Congress would not take on itself the pay of the State line as well as the continental line, the further issue of certificates for half pay was suspended until the future order of the Legislature. This suspension was revoked, by the act of 1790, as to those serving to the

end of the war only. After this, viz: in 1791, a great number of officers came, forward and demanded warrants for half pay: some of these were supernumeraries before the order to consolidate the troops at York, after the surrender of that place, some of them had become so on that occasion, and many of them as late as February, 1783, after their troops had been enlisted from them, as before stated, when the last reduction of the legion took place. These latter claimed as having served to the end of the war, as did others, who remained with Dabney until the proclamation of peace. may be proper here to remark, that, when the last reduction was made by Colonel Dabney, in 1783, and this new arrangement was made known to the Executive, the Council advised the Governor to write to Colonel Dabney, directing that the supernumerary officers retire on half pay; and this was much relied on by those who were thus discharged, under a special order of the Executive, saying to them that they were to have half pay. The Auditor, on the applications above mentioned, however, refused to issue the warrants, and appeals were taken to the district court of Richmond. That court adjourned the questions arising to the general court for its opinion; which court decided, that, under the act of 1779, the officers, both of the continental and State lines, were entitled to half pay, unless they failed to serve to the end of the war, or, being supernumerary, refused again to enter into the service on a command to that effect; and that the troops being disbanded in February, 1783, and the preliminary articles of peace being signed before that time, the officers ought to be considered as having served to the end of the war. Judgments were, accordingly, entered up in the district court for the appellants; and appeals were taken, on behalf of the Commonwealth, to this court. The opinion pronounced in this court, in May, 1792, was to this effect, (confining the opinion to the officers of the State line:) that such of the officers, and only such of them as actually served to the end of the war, unless restrained by being prisoners on parol or otherwise, and such of them, who, becoming supernumerary, again actually entered into service, and continued therein to the end of the war, are entitled to half pay for life, to commence from the determination of their command or service, when the same was duly signified to them by the Governor, and their regiments disbanded in pursuance thereof; which, it appears, was on the 19th and 22d April, 1783. This decision being contrary to that of the general court, not only as to the claim of the supernumerary, but as to what is to be intended by the terms end of the war; being contrary, in these respects, to the understanding of the contract by the officers both of the continental and State lines, to the understanding of Congress when it undertook the discharge of those obligations, originally commencing with the act of 1779, as to the continental line, and our State line who had occasionally supplied our quota in the continental line; believing that no such ingenious or disparaging distinction between the State and continental lines was ever contemplated by the act itself, or by any subsequent act of the Government; but that the reverse was clearly manifested both by the State Government and Congress, in all their acts and resolutions during the war, and for some time after its' termination: that decision, I say, could not be expected to be, nor was it satisfactory. There was attached to each case a reservation that the decision should not prejudice the party in any future claim, or fuller proof. Under this reservation, a number of officers belonging to Dabney's legion, being the corps consolidated at York as aforesaid, and who had been deranged, and became

supernumerary under the last arrangement of that corps, in February, 1783, again applied for warrants. Their application was again rejected, and they appealed to chancellor Wythe. He decided (as will be seen in his volume of Reports, 62) in the same way that the general court did in the cases above mentioned. An appeal was taken from this decision to this court, when three judges, one of whom came into the court after the former decision, reversed the decree of the chancellor, on the grounds, 1st, that there was no new ground of evidence whereon to found a distinction between the cases; and, 2d, that the former decision had correctly decided that the end of the war, within the meaning of the act of 1779, was the proclamation of peace by the Governor of Virginia. On this point, they say that the bounty of half pay given by the act of 1799, to the officers of the State line in the said act described, was an extra reward or bounty for their services to the end of the war, if they should serve so long, &c. This case was argued entirely on the ground that these parties had served to the end of the war, on which ground alone they put their case. Chancellor Wythe had also put it on the same ground, though he enters into an argument (which strongly marks the ability of that judge) to prove that supernumeraries were entitled to half pay under the act of 1779. The decision of the general court as to the supernumaries, being thus fortified by the able argument of Chancellor Wythe, the officers as may well be supposed, were still far from being satisfied with the result. Their next course was to present petitions individually to the Legislature, though it was long before they mustered resolution to do this; finally, however, many of them prevailed in that way, and succeeded with that body; and, amongst them, every one of the claimants in this case, except Quarles, who it does not appear ever applied, and many of the other applicants in the first case, have also succeeded; some of them were supernumerary as early as 1780, and some became so on the first consolidation of the troops under Colonel Dabney, after the capture of York; besides others who were not parties to either of these controversies. Thus, every species of supernumerary has been recognised as having a just claim to half pay, by successive Legislatures, which is an evidence that these decisions of this court were not satisfactory to that body, or to the country; and are sufficient, at least, to remove any weight which may have been given to the act of 1790, as a legislative interpretation of the act of 1779.

I have further reasons also for inducing me to believe that we are at liberty to reconsider those decisions. We have now a compilation of our laws, and of the journals and resolutions of the Legislature, which, as to the army, in many respects operated as laws; and which give us a ready reference to all the lights which can hence be thrown on this subject; and without which I confess, I should have been in great dark ess as to points which a laborious investigation has cleared up to my satisfaction. Besides this, many important documents, lost or mislaid at the time those cases were before this court, have been discovered; some of them between the first and second arguments of this case, and some of them even since the last argu-Indeed, I have been forcibly struck with the circumstances and manner under which these documents have, from time to time, as it were by accident, been brought to light. They are all submitted to us as though they had been before the court below, and are thus made part of the record before us. I think those documents would, probably, have had an important bearing on the question, had they been before this court formerly,

They have certainly explained things to me, without which I would have been entirely in the dark, as will presently be seen. One of them, the list of navy officers, which has been discovered since the last argument, I consider of very great consequence in this particular case, as the former part

of this opinion will show.

We have been also favored by Mr. Call, with his manuscript report of the arguments of counsel, and two of the judges in the last case. We there see on what grounds that case was put by the counsel on both sides, and what considerations weighed with the court; and I think it manifest from this report, that the case was misunderstood in an important matter, and which had great weight with at least one of the judges who delivered an opinion. It was an error into which I myself was nearly falling, and from which I escaped by the aid of one of the documents which has lately been discovered. This, by the way, is one strong proof to me, amongst others which have occurred since I have been in this court, of the importance to the public of Call's manuscript reports; calling for their publication, so as to complete the series of our decisions. I take this occasion to tender him my thanks, for the opportunity he has given me of seeing the report of this case. It seems to me probable that the court, as well as the reporter, fell into an error in that case, in supposing we had no troops for State defence, in the strict sense of the term, except mere temporary corps, such as were raised under the act of May, 1779, (10 Hen., stat. at large, 18,) and the legions raised under the act of March, 1781; or, at least, that the officers then and formerly before the court, were officers of corps of this description, and so were never contemplated by the act of 1779. They were, probably, under the belief that the officers of our regular State line had been provided for by Congress. This I am inclined to infer from the circumstance that the reporter, in speaking of the troops that had been raised for State defence, says, that, of this kind, a body was raised under the act of May, 1779, (above referred to,) and another under the act of March, 1781, to raise two legions, &c. These are the only acts for raising troops for State defence to which he refers. Now, the first of these acts provided for raising a body of volunteers merely, for a temporary purpose, during an invasion; the latter is an act to raise two legions of horse and foot for the defence of the State, to serve during the war, but not to take the field, or do duty, except in case of actual or threatened invasion, during which they are to continue in the field, if the Executive shall think proper. They are to be exempt from militia duty, and all manner of drafts; to be paid whilst in service or under discipline, and half pay at all other times during the existence of said legions; the commissioned officers, though, to receive pay, rations, and forage, only whilst in service, &c. This, also, was, as a mere temporary corps, little above the militia; and who, though they may have served under Dabney, of which however I see no evidence, never had the shadow of right to half pay for life; and not a man of them has ever claimed it, or ever can. Yet, strange to tell, Chancellor Wythe says that Christopher Roune, and others, (who were complainants in that case,) were officers of one of the legions raised under the act of March, 1781. Mr. Call, the reporter, also shows that this court fell into the same mistake; for, he says, that the appellees were officers in Colonel Dabney's legion, raised under the act of 1781. The arguments of both bench and bar, show that they were clearly under this impression. Brooke, the attorney general, insisted that, from the nature of the levy, these officers were at the disposal of the

Government, and could be retained or disbanded at pleasure; their pay was during the existence of the legions only. However great their merits, they were not to be compared with those of the regular armies; great part of their time was to be spent at home, and their actual service occasional only. The officers were not entitled to the provisions of the act of 1779; for that act relates to troops on general establishment, without particular stipulation. Besides, their compensation is prescribed in precise words; and only while in service. No fair construction, he says, can place such limited service on a level with the general services or rewards of the veterans. He next contends, that if they could be brought within the act, they did not serve to the end of the war, &c. On the side of the officers, it was insisted that the discharge was not absolute, but in the nature of a furlough, they being liable to be called again into service, according to the original organization of the legion; which, from its commencement, was subject to partial duties. It was never necessary that all should be called at once into service; but the detail was in proportion to the exigency of the occa-They then argue the point, when the war ended, &c. within the meaning of the act of 1779. My object at present is, merely to extract so much of the report as to show that these parties were treated, considered, and their cases adjudged, as though they belonged to one of the legions raised under the act of March, 1781; and, I think, so far, the description of them on both sides, brings them precisely within the terms of that act. argument of the attorney general has no bearing on the permanent regular State line, if such an one existed, except impliedly to admit that such a corps would fall within the act of 1779. Let us see in what light the Judges looked upon them: Judge Roane says, to put men whose duties were occasional only, and who were often not employed for the public at all, upon the same footing with the veteran whose services were constant, continually exposed to the hardships and dangers of war, would have violated every principle of propriety. He then contrasts the services of one with those of the other; for the one he says, express remuneration, during life, is made; for the other, no such provision is made, and they claim it by equitable construction only. But what equity have they? By the terms of their organization, they were subject to less duty, &c. Carrington concurred. Judge Lyons, 1st, objects to the contract, if it to be is so considered, for want of mutuality; the officer not having stipulated to serve, and not being bound to do so; 2d, that it was a gratuitous bounty offered for services when performed, and not before; 3d, that there was not actual service during the war, and that a man to entitle himself to a gratuity, must shew strict performance, &c. I confess that when I compared this case with the act of March, 1781, and considered, as I then did, the claimants as officers belonging to one of those legions, I was astonished to find that any doubt could have existed as to the propriety of that decision as applicable to such a corps. The return of the State legion, under Colonel Dabney, as made out and returned by him, was before that court; but the return of the field officers of the State line was not; it had then been mislaid, and is one of the documents discovered (as by accident) since this case was first argued in this court. That return contains a report of the officers of the various corps for State defence, except the navy and Crockett's regiment, viz. the first and second State regiments, the artillery and garrison corps, the State cavalry, and the Illinois troops; and Dabney's legion was composed of the remnants of these (except the last,) remaining after the capture of York. I

ound that these corps had been raised, many of them at an early day, and especially the first and second regiments, which were raised under the ordinance of convention of July, 1775. That one of them with pretty full ranks, had marched to the north as early as 1777, to supply our quota in the continental line, until it could be recruited, and had returned in 1779, with one-third of the original force; and that another of them, I think the artillery of which Christopher Roane was a Captain, met the enemy, under Gates at Camden, and retired afterwards so much cut up, as that there was not more than one captain's command, which fell to him. And what was my surprise when I came to compare Dabney's list of his legion, with that returned by the field officers, to find that, instead of his legion being one of the legions raised under the act of 1781, they were the very veteran officers spoken of by the attorney general and Judge Roane, as alone coming within the meaning of the act of 1779!

The officers of course, were not present at the argument in this court, so as to correct the error which their counsel, as well as the attorney general and court, fell into in this respect; and which error has remained unknown to them, and uncorrected, until I have had an opportunity, in consequence of the recovery of these papers, now to correct it. Whatever the formal decision of this case, as entered of record, may be, therefore it is impossible to read the argument, both of the attorney general and Judge Roane, without applying them favorably to the officers of the regular State line. They could not have argued as they did, had they known that the appellees

were veteran officers.

I have been thus minute in the statement of this case, because it is not in print; and because I not only wish to take from its weight all that ought not to weigh against these officers, but to transfer to the opposite scale whatever of it belongs to that side of the question. But to proceed, as briefly as possible, to the consideration of the act of 1779. Suppose Congress had never taken upon itself the pay of the continental line, and they, i. e. the supernumeraries of that line were now looking to us for their half pay, under the act of 1779, could we say no to them? Could we have amended the act during the war, so as to make it mean that the supernumerary officer never called on to re-enter the service, should not be entitled to half pay; no one will pretend to deny, but that such an act of the Legislature, at that time, would have disbanded the army. Why? Because no officer knew when he would become supernumerary; and it was the full understanding of all parties that, however this may happen, it shall not prejudice you, if you hold yourself ready and re-enter, as many did when called on. But Congress have since agreed to redeem this pledge, and to pay the supernumeraries of the continental line, having recognised their right as originating under the act of 1779, and to which they would have been entitled, as all admit, had Congress permitted it to remain entirely on this act. But the words in this and all the other acts, where the two lines are provided for in the same law, are precisely the same as to each, in all important particulars; and in the section now under consideration, are precisely the same; they must, of course, have the same interpretation as to both. Had any discrimination or difference been attempted, by law, during the war, a dissolution of the State line, and total destruction to our cause, would have been the result. But, if there was then no doubt about it, that was the time to explain it. On the contrary, the right was then admitted in the clearest and most explicit terms by every branch of the Government. Committees, with Patrick Henry at their head, reporting resolutions and laws, full to the point; and the Executive, aided by Edmund Randolph, the attorney general, as their law adviser, admitting that the construction of the officers was the correct one. In addition to all which, in my humble opinion, the act itself will admit of no other sensible construction.

Strike from the act the clause respecting supernumeraries, and then it will be simply a promise of half pay for life to the officers who serve to the end of the war; similar to the resolution of Congress, of May, 1778, giving half pay for seven years to the officers of the Congress troops, who serve to the end of the war. If this were all, the officer who has fought his battle and lost his men, or if their time of service is out, and he is without a command, has done no wrong; he cannot be cashiered for this; he remains in camp until his corps is replaced, or until he gets a furlough: you cannot dismiss him, especially if his ulterior emoluments, in land or half pay, &c. depend on his service to the end of the war, (and the supernumerary has as regularly got his land as any other.) But it was necessary to promise half pay, in order to keep our armies in the field; but the Government wants it so arranged, that the officers, when without command in the field, may be directed to retire, without forfeiting their land bounty or half pay, as it were under a law furlough, if I may use the expression. This is an arrangement beneficial to the State, inasmuch as it saves pay and subsistence, and at the same time enables the State to recall the officer, if wanted. This is the true history of the case, according to my understanding of the act and the motives which gave rise to it; and it was so understood by the officers, and was acted under by them; and this construction was recognized, both before and since the war, by the legislative and executive branches. Thi construction, too, alone, in my opinion, gives sense to those words in the act, "to commence from the determination of their command or service," or to the words, "from the time of their reduction," in the resolution of Congress, of October, 1780, which declares that the officers who shall continue in service to the end of the war, shall be entitled to half pay for life, to commence from the time of their reduction, not from the end of the war. Indeed, if half pay depended on actual service in the field to the end of the war, in any sense of those terms, why say any thing about supernumeraries? If so soon as they became such, they were to have no more claim than any one else who might thereafter enter the service and continue therein, why say any thing further than that the Government reserves a right to discharge them, and deprive them of this ulterior reward? This would not have prevented their again entering the service, and finally obtaining their reward. We well know that such a provision would have disbanded the army. Had it been left as Congress at first put it, as to their troops in service to the end of the war, then a discharge before that, must either have produced the effect that I before stated, that the officer being thus prevented from serving without his fault, was entitled to the reward, or he would have a right to remain in the field, or on furlough, until wanted, and get full pay, &c.

I have looked into the journals of the day, when the act was passed for adjusting the pay of the army, and directing discriminations to be made, to see if any doubt was then entertained on this subject; but so far from this, I find the reverse was the case. Reduced officers, then entitled to half pay, were recognized as belonging to both lines: but as many officers in the State service may never have been in the field; may have been mere recruiting officers, &c.; may never have enlisted their men so as to take the field; or for

many other causes, could not have been within the true meaning of the act; it was but justice to the State that all such should be excluded. The Executive so understood it, and they certified the lists to the Auditors for their guide in issuing warrants: not warrants for service to the end of the war, for it had not been ended; and until it was ended, no one could claim on that score. Nor was it for them to hold up the list of supernumeraries, to see who would re-enter and serve to the end of the war, for there was surely no necessity for it on that score; if he was then found in service, it could not have been objected that he had been a supernumerary for a time. On the construction contended for by the Commonwealth, the whole clause is sense-less and useless.

Justice to myself and to the country, has compelled me to give, thus minutely and at large, my views on the subject: this question being one not less important to the character than to the treasury of the State. I believe the supernumerary officers have law and justice on their side; and, so believing, I cannot refuse to say, both in my character of a judge of this court, and of an individual who will have to pay my proportion, that justice ought to be done to them.

I am, therefore, for affirming the judgment.

No. 10.

Extract from an act of the General Assembly of Virginia, of November, 1781, entitled "An act to adjust and regulate the pay and accounts of the officers and soldiers of the Virginia line on continental establishment, and also of the officers, soldiers, sailors, and marines, in the service of this State, and for other purposes."

"And, whereas, by the reduction of the battalions and corps in the State service, a considerable number of officers have become supernumerary: Be it enacted, that a return of all the State officers shall be made to the next Assembly, wherein the corps, the rank of each officer, the date of his commission, the number of men at first raised in each corps, number of men when reduced, and time when reduced, shall be particularly specified by the Executive; and the Executive are hereby empowered and required to set on foot proper enquiries to discriminate such officers, as by unworthy conduct or by any means whatever, be thought unfit to be considered as entitled to half-pay."

No. 11.a. Le 10 Herring 349

Proceedings of a board of field officers, in the particular service of the State, which sat at Richmond by direction of his Excellency the Governor, signified by the Commissioner of the War Office.

Wednesday, February 6th, 1782.

Present—Col. George Muter, Lt. Col. Charles Dabney, Lt. Col. John Allison, Major Alexander Dick, Major John Neilson, Major Thomas Meriwether.

A letter from the Commissioner of the War Office of this date, pointing out to the board the business the Executive require they should attend to, was received and read. A letter from Col. Carrington to his Excellency the Governor, sent to the board by his Excellency, respecting Capt. Crump, was read. And a letter from Commodore Barron to the Commissioner of

the War Office, sent by the Commissioner, was also read.

The board resolved to proceed in the business in the fullest manner they possibly could, from the papers and information that might, from time to time, be produced to them, or laid before them. And no returns of the several regiments, nor lists of the officers, being ready, the officers present were directed forthwith to prepare the most accurate returns in their power of the strength of the regiments at the different periods required by the Executive, they respectively commanded or belonged to, and lists of the officers, with the dates of their commissions, &c.

The board then adjourned till to morrow, ten o'clock.

Thursday, February 7th, 1782.

Pesent—Col. Muter, Lt. Col. Dabney, Lt. Col. Allison, Major Dick, Major Neilson, Major Meriwether.

Returns and lists of the officers of the first State regiment, the State garri-

son regiment, and the State cavalry, were received.

The board proceeded to examine these returns and lists, and find that sundry officers, from some particular circumstances of their conduct and situation, ought, in their opinion, to be discriminated as not, in their present circumstances, &c. entitled to half pay; determined that the names of such officers, and also of all such as they might find to be so circumstanced in any future list that might come before them, should not be noted in the returns and lists of the regiments, but that a separate and distinct list of such the names of such officers should be made out, in which the particular circumstances that influenced their opinion should be * * * * * * *, the names of such witnesses as they thought necessary to be produced at * * *, when an inquiry into the conduct of any of the said officers should take place, or courts martial sit for their trial.

The board resolved to take into their consideration, what was necessary to be done towards getting the lands given by act of Assembly to the officers and soldiers of the State battalions and corps, surveyed and allotted, and appointing one or more officers to attend on the next Assembly on the business

of the State officers and soldiers.

The board proceeded in the business before them—and adjourned till to-morrow, ten o'clock.

Friday, February 8th, 1782.

Present—Col. Thomas Marshall, Col. Muter, Lt. Col. Dabney, Lt. Col. Allison, Major Dick, and Major Meriwether.

The former proceedings of the board were communicated to Col. Mar-

shall.

The board proceeded to the further consideration of the business before them—and adjourned till to-morrow, ten o'clock.

Saturday, February 9th, 1782.

Present—Col. Marshall, Col. Muter, Lt. Col. Dabney, Lt. Col. Allison, Major Dick, and Major Meriwether.

A return and list of the officers of the State regiment of artillery was re-

ceived.

The board determined to appoint Col. Thomas Marshall and Major Meriwether to join the continental officers appointed for the same purpose, and act in concert with them in superintending the surveyors employed in surveying the lands given by Assembly to the State officers, for and on account of the field officers of the State battalions and corps; and these gentlemen expressing their willingness to accept of the appointment, a letter of instruction was written and delivered to them. And it was resolved to communicate the appointment and instructions to the captains and subalterns of the State troops, that they might appoint officers of their rank to act for them on the same occasion, or authorise the same officers, (they having signified their willingness to act for them also,) the field officers have appointed to represent and act for them, which ever they thought best.

The board considering it to be absolutely necessary to appoint officers, with whom Col. Marshall and Major Meriwether should correspond while acting for the field officers, and that the same officers, or one or more of them, should also attend on next Assembly on the business of the officers and soldiers of the State battalions and corps, Col. Muter, Col. Dabney, and the Rev. Mr. An-

drews, where appointed for these purposes.

There appearing great, almost insurmountable, difficulties in getting the officers and soldiers their accounts settled with the Auditors of public accounts, the board wrote to the Auditor on that subject. That letter, which was returned, together with the Auditor's answer thereto, the board resolved should be preserved with their other proceedings.

The board proceeded to the further consideration of the business before

them-and adjourned till Monday, ten o'clock.

Monday, February 11th, 1782.

Present—Col. Marshall, Col. Brent, Col. Muter, Lt. Col. Dabney, Major Dick, and Major Meriwether.

The former proceedings of the board were communicated to Col. Brent. The board proceeded to the further consideration of the business before them—and adjourned till to-morrow, ten o'clock.

Tuesday, February 12th, 1782.

Present—Col. Marshall, Col. Brent, Col. Muter, Col. Dabney, Major Dick, and Major Meriwether.

A return and list of the officers of the second State regiment was received. The board proceeded to the further consideration of the business before them—and adjourned till to-morrow morning, ten o'clock.

Wednesday, February 13th, 1782.

Present—Col. Marshall, Col. Brent, Col. Muter, Col. Dabney, and Major Dick.

The board proceeded to the further consideration of the business before

tnem.

A return of the Illinois troop of light dragoons, and list of the officers, was received.

On reconsidering the appointment of the officers with whom Col. Marshall and Major Meriwether are to correspond, &c. the board think it expedient to make a new appointment altogether; more particularly as several

captains and subalterns are now in town, whose opinions and approbation as they are equally interested, they wish to have in the appointment.

The board, after consulting with such of the above mentioned officers as they have seen, and receiving their approbation, do appoint Col Muter and Col. Dabney to correspond with Col. Marshall and Major Meriwether, and generally to attend to the business of the State officers and soldiers, when-

ever such attendance is necessary.

On examining the list of officers of the State artillery, the board are of opinion that they cannot decide finally in the case of Capt. Allen, whether he is to be considered as an officer entitled to half pay or not. In an act of Assembly, passed in May, 1778, for raising a battalion of infantry and for other purposes, they find it enacted, "that the said regiment of artillery shall be officered in the same manner, and that the officers thereof shall receive the same pay and rations as is customary in artillery regiments in the service of the United States of America." And they are informed that there are no officers of artificers in the continental regiments of artillery, that are considered as officers of the line, entitled to all the privileges and advantages given to such officers. Capt. Allen was appointed an officer of artificers only, but on producing his commission to the board, they find that he is commissioned as a captain of artillery generally, no notice being taken in his commission of his commanding the artificers, though it appears that that has been his constant duty, and that he has never commanded in the line of officers at all-

The board are also at a loss how to determine respecting two other gentlemen included in the list of the artillery officers, viz: Dr. Mathew Pope and the Rev. Mr. Andrews, the first surgeon, and the last chaplain, to the regiment. Dr. Pope, after the greatest part of the regiment marched under the command of Col. Edmonds, to the southward, as there were very few soldiers of the regiment remaining in the State, and these much scattered, so that there was no duty for him to do as regimental surgeon, accepted of an appointment from the Executive, of physician and apothecary to the State at Richmond, and afterwards of chief surgeon in the army commanded by Gen. Muhlenburg, but without resigning his appointment as surgeon to the artillery, though it does not appear to the board that, at the time of his accepting the first of these appointments from the Executive, he stipulated that his appointment as surgeon to the regiment should be secured to him. Mr. Andrews was regularly appointed to be chaplain to the regiment, but in the session of October, 1779, a resolution passed the Assembly to the following purpose: "that the following officers in the staff department are supernumerary, and ought to be discontinued, to wit: the director general, chaplains," &c. in consequence of which (the board have been informed) the officers enumerated in that resolution were discontinued, and, from the time of their being discontinued, have done no duty. Mr. Andrews considers that discontinuance not as an absolute dismission from the service, but only as reducing him to the state of a supernumerary. The board consider themselves as incompetent to decide in these three cases, and, therefore beg leave to refer them entirely to the determination of the Executive.

Thursday, February 14th, 1782.

Present—Col. Marshall, Col. Brent, Col. Muter, Lt. Col. Dabney, and Major Dick.

The board proceeded to the further consideration of the business before

them.

Captain Campbell being (yesterday) recommended to the board by several captains and subalterns of the State troops, to be joined to Col. Marshall and Major Meriwether in their appointment, the board readily agreed to it, and wrote to *Major* Campbell, requesting that he will consider the letter of the 8th inst., directed to those gentlemen, as also addressed to him.

No officer from the navy, and no officer from the regiments raised for the western defence, attending, and the board having no returns or information on which they can proceed, from the navy or from those regiments, they therefore cannot, with any propriety, proceed to consider them at all.

The board find that in May, 1779, an act passed, directing the raising two regiments for the eastern, and two for the defence of the western, limits of this State. They are informed that only one of these regiments (Col. Crockett's) was ever raised; and it does not appear to them, that any gentlemen appointed to command in those regiments can or ought to be considered as officers in the service of the State, except the officers of Crockett's regiment alone, therefore not entitled to half pay.

The board resolved that the returns of battalions and corps, with the lists of the officers, as subscribed by the commanding or field officers, should be delivered to the Commissioner of the War Office, together with their proceedings, and that the list of discriminated officers should be annexed to

their proceedings.

T. MARSHALL, President.

In Council, November 14, 1783.

The within report of the board of officers, is the original which was made to the Executive, and ought to be considered as authentic.

BENJ. HARRISON, Jr.

NAMES.	REGIMENT.	RANK.	REASONS FOR DISCRIMINATION.	WITNESSES IN EACH CASE.
Elliot Rucker	First State	Lieutenant	rather would wish to resign than join the regiment, because he had	Col. Dabney.
Charles Russell	same	same	the command of a militia battalion, and hoped to distinguish himself. When required to join Col. Dabney's regiment, in consequence of his having acted as a continental quartermaster, had leave given him, (of absence,) for a certain time, to settle his accounts, but failed to join after that time had elapsed.	Capt. Thomas Hamilton.
John Russell Churchill Gibbs	same same	same same	Refused to join Col. Dabney's regiment when ordered. Had the command of a guard at R chmond, which he quitted, with-	Col. Dabney. Capt. Hamilton.
John Hardyman Ben. Edmonson		same same	out leave, and went to Petersburg, where he was taken by the enemy. His case is the same with Lt. Rucker's. Failed to join when ordered by Col. Dabney; and when he received Col. Dabney's letter, ordering him to join his regiment, said he choose	Col. Dabney. Lt. John Hardyman.
John Mazarett	StateArtillery	Major	rather to resign. The above named officers were arranged to Col. Dabney's regiment, and he was directed by the Executive to order them to join. Unofficer and ungentleman like behavior, in several instances, while he served as an officer in the State Artillery.	Col. Muter, Capt. Young, Quartermaster Gen. Capt. Williams, of the State artillery Capt. Patrick Wright, (late of the State artillery) lives at Warwick Capt. Clay, of the State artillery Mr. William Smith and Mr. Obedial
Thomas Clay	same	Captain	Said to be under an arrest, and to have been arrested by Major Maza- rett.	Smith, of Chesterfield.
Sewel Edinburg	same	same	Said to be under arrest, and to have been arrested by Capt. L. Grahame.	金头是是没有更是多度。
John Baytop	Second State	Lieutenant		Capt Machem Boswell.

The Auditors now present wish to have this report authenticated by a certificate from the Executive, before they proceed to adjust the claims of those officers who may be entitled to half pay.

November 13th, 1783.

H. RANDOLPH, J. PENDLETON, Jr.

I do hereby certify that the foregoing document, commencing "proceedings of a board of field officers," &c., and ending with the name of "J. Pendleton, Jr." is truly copied from an original paper, found by Judge Wm. H. Cabell, among the papers of Col. Read, and by him deposited in this office.

Given under my hand, at the Auditor's office of Virginia, this 17th day of August, 1831.

Angua Ruc's George-Tri						Auditor	of Pr	blic.	Accoun	its.
The State State		No. 11.8		F40 \$5 12.0						
Navy, consisting of-	-1 commodore (pay 14s. per day, 7 captains, (8s. 3d. per day,) at 3 lieutenants, (6s. per day,)	%,) - £73, - 54 15, -	-	103 do 1044 May, 1 April 1791, 1940 di 40 1940 di 40	100 to 10		nept a		£127 511 164 £803	5
Crockett's regiment,	2 lieutenants,	72 each, 48 each, 36 each,	ant,	Design and a	500 500 500 500				£135 90 216 96 216	
TO home of the morning to the control of the contro	a line to the Justines for their go	the su countries and succession of the successio				Navy,		4	£753 803	

A LIST OF OFFICERS of the State line that are entitled to half pay; taken from the lists that were returned to the Executive by the Board of Field Officers that sat in Richmond on February 2d, 1782, and on April 13th, 1782, for the purpose of making such discriminations and returning such lists to the Executive, as were required by act of Assembly, passed October, 1781, and by the Executive authenticated and transmitted to the Auditors for their guide in issuing warrants to the Officers for half pay; with the amount of the half pay, and of the warrants already issued.

Reg't.	Strength at different periods.	Officers' names.	Rank.	State when the boards sat			Am't of warrants issued.	
State.	k and file including the war,	George Gibson -	Colonel .	Supern'y	£72-9ach.	£135		Judgment sup. co. Henrico, (depending in the court of appeals,) for 4,845 dolls. half pay for life.
	and iclu	John Allison -	Lieut. Col.	Same -	commer come	108*		
St	ainc	Thos. Merriwether	Major -	Same -	Section of security	90		Do do do for 6,587 dolls. do do.
First	rank 9, ii for t	Thomas Ewell .	Captain -	Service -		72		2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
		William Hoffler, -	do -	Supern'y	15 June, 1760	72	£316	Do do do for 8,587 dolls. do do.
	1777, 1 9, 177 1780,	Windsor Brown -	do -	Service -	ь	72	-	Paid May, 1791, £1,841 1 4, (prin. & int.) commutation.
	77	Thomas Hamilton -	do -	Same -	37 12	72		1 1701 -13 01 070 2 0 commutation
		Abner Crump -	do -	Same -	at £73,	72 72	•	April, 1791, paid £1,052 3 0, commutation.
	1st	Thomas Armstead .	do •	During	gak .	72		Paid 2,400 dolls, commutation, under act Feb. 1826. Paid 2,400 dolls. do do 1825.
	ay Die	Charles Ewell -	do	Supern'y	•	72		Paid 2,400 dons. do do 1025.
7.	M, E	John H. Holt -	do -	Same -	10,0	72		Paid \$2,556 40 commutation, (prin. and int.) act Feb. 1820.
	L'ein .	William Campbell -	do -	Same -	property)	72		Paid 2,400 do act of Jan. 1826.
	rd 195	Angus Rucker	1st Lieut.	Same -		48		Paid 1.800 do act of Jan. 1827.
	Wa Vii	Frederick Woodson	do -	Service -		48		Paid 2,400 do act of Feb. 1826.
63	th o	Wyatt Coleman -	do -	Same -		48		Paid April, 1791, £1,043 6 3, (prin. and int.) commutation;
	t t	Wyatt Coleman -	40	Same			dr. da	judgment district court.
	off off	John Marston -	do -	Same -	a this office.	48		
	the den	Thomas White -	do -	Supern'y	A cobteq ma	48	or-gu	Judgment sup. co. Henrico, (depending in the court of ap-
	o orice	GALIGORISTA CHIND -	10-101050	98 999000	sente, comme	aran 2	J. hin	peals,) for 6,900 dolls. half pay for life.
	n uio	William Broadus -	2d Lieut.	Same -		48		Paid 1,800 dells. commutation, act of Feb. 1825.
	he hiss	James Harper .	do -	Service -		48	-	Paid May 1791, £1,043 6 3, (prin. and int.) commutation.
	ordered to the northward, June 1st When ordered to Virginia, Dec. commissioned officers, 295. May 1,	Wm. Slaughter -	do .	Same -	-	48		Paid April, 1791, 701 8.0, (prin. and int.) commutation;
	Or Or	and ranks excession of	th same no	A he con	THE THE THIRT TO			judgment district court.
	n.00.	Pratt Hughes -	do -	Supern'y		48		Paid Nov. 1793, £759, do do do.
	When 630. non- 195.	William White -	do -	Same -	6th Feb. 1781	48		HITTER BUILDING THE A MENDER BY DESCRIPTION OF THE PARTY
	3	William Yawter -	do -	Same -		48		

24 Officers.

LIST OF OFFICERS—Continued.

eg't.	Strength at different periods.	Officers' names.	Rank.	State when the boards sat.		Am't of half pay	Am't of warrants issued.	Marginal notes, by Auditor.
Second State.	Strength when first raised not known to the Board. Discharged in April and May, 1780, about 280. Remained for the war, about 31.	William Brent Charles Dabney John Lee Henry Dudley Augustin Tabb Machim Boswell John Hudson William Long James Moody, Nathaniel Welch John McElheny Thomas Quarles Samuel Carey Levin Walker Isaac Holmes John Fleet Thomas Hayes Wharton Quarles	ColoneI - Lieut.Col. Major - Captain - do	Supern'y Service - Supern'y Service - Same - Supern'y Same -	6th Feb. 1781	£135 108 90 72 72 72 72 72 72 72 72 72 72 48 48 48 48	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	April, 1791, paid £1,972 16, (prin. and int.) commutation. Judgment sup. court, Henrico, (depending in court of appeals) for £1,964; half pay for life. Depending in the sup. court of Henrico. Paid \$2,400, commutation, act Jan. 7, 1827. Paid £787 16, (prin. and int.) commutation, July, 1794; judgment court of appeals. Paid \$800 in part, commutation, under act passed Feb. 16, 1829. Judgment sup. court of Henrico, (depending in the court of appeals) for \$3,020; half pay for life.
State Artillery.		Thomas Marshall Elias Edmond James Bradley Gideon Johnson Christopher Roane	 Colonel - Lieut Col. Captain - do -	Supern'y Same - Same - Same - Service -		£180 135 90 90	-	Judgment sup. court of Henrico, (depending in court of appeals,) for \$12,541; half pay for life. Paid \$4,500, commutation, act Jan. 1829. Judgment sup. court of Henrico, (depending in court of appeals) for \$14,575; half pay for life. Paid \$3,000, commutation, act of 1827-28.

eg.	William Spiller -	Captain	- Super	n'y	1	1 £90	1 .	Judgment sup. court of Henrico, (depending in court of ap-
matrosses	John Williams - Wm. Thompson -	do do	- Same		•	90		peals) for \$5,370, half pay for life. Depending in the sup, court of Henrico
The state of the s					-	90		Judgment sup. court of Henrico, (depending in court of appeals) for \$4.572; half pay.
907 P	Peter Kemp .	do	- Same			90	-	Judgment sup. court of Henrico, (depending in court of an-
pus	Thomas Marshall	- do	- Same	-	-	90	-	peals) for \$9,100; half pay for life. Judgment sup. court of Henrico, (depending in the court of
300	Humphrey Marshall Robert Cowne	Capt. Lieu				60		appeals) for \$10,525; half pay. Paid \$2,433-25; commutation, under act of Jan. 16, 1890
een 81.		do	- Same			60	-	Judgment sup. court of Henrico, (depending in the court of appeals) for \$9,411; half pay for life.
17	John Quarles -	do	- Same		1576 Feb. 1727	60		Depending in the sup. court of Henrico.
de	Yancy Lipscomb -	do	- Same		1	60		Depending in the sup. Court of Henrico.
an						00		Judgment sup. court of Henrico, (depending in the court of
Poo	Henry Vowles -	do	- Same			60		appeals) for \$6,216.
182		1000	June			00		Judgment sup. court of Henrico, (depending in court of ap-
lo I	William Oliver -	do	- Same			60	1000	peals) for \$4,188; half pay for life.
1	Bernard Lipscomb -	do	- Same					
rs	John Scott -	do				60		
4 50	James Claverus -	do	- Same			60		
na:	Walter Graham -		- Same		-	60		
vhe	waiter Granam -	do	- Same	en		60		Judgment sup. court of Henrico, (depending in court of ap-
, P	Cary Wyatt -	1st Lieut	Service					peals) for \$9,410; half pay for life.
ly le	Nathaniel Rice	do		е -	-	60	-	Paid June, 1791, £1,052 3, commutation, (prin. and int.)
tin	Walter Scott -	do	- Same		-	60		Paid May, 1791, £876 16, commutation, do.
H o H		All the second second second	- Same			60		
1 8 %	Robert Brown -	do	- Super	n'y	-	60		The state of the s
quotas for some time; when first formed, between 300 348 matrosses, mostly discharged in 1780 and 1781.	James M. Marshall -	do	- Same		6th Feb. 1781	60	to 6Fb.	Judgment sup. court of Henrico, (depending in court of appeals) for \$9,400; half pay for life.
fr	Austin Cowne -	do	- Same			60		pears) for \$5,700; than pay for the.
ma	John Turner -	do	- Same			60		Judgment sup. court Henrico, (depending in court of ap-
0 00						198		peals,) for \$3,580; half pay for I fe.
34	Samuel Butler -	do	- Same			60		pounds,) for po,000, than pay for file.
من	William Ballard -	do	Same			60		
De De	John Spencer -	do	Same	-		60		Judgment sup. court Henrico, (depending in court of ap-
Did duty by 1799, Dec.	John Yates -	do	Same			60		peals,) for \$4,433; half pay for life.
Did	31 Officers.		le es			2,295		

| SEP'31' --- C '11

LIST OF OFFICERS—Continued.

Reg't.	Strength at different periods.	Officers' Names.	Rank.	State when the boards sat-	Commencement of half pay.	Am't of half pay	Am t of warrants issued	Marginal notes, by Auditor.
State Garrison.	Strength when raised not known to the board. 1781, Jan. 19, rank and file 151, non-commissioned officers 23, total 174.	George Muter Charles Magill Thomas H. Drew Opie Davenport John Vaughan David Mann James Kennedy Robert Boash A. T. Dixon 9 Officers.	Colonel - Major - Captain - Lieutenant do - do - Ensign - Surgeon -	Supern'y Same - Same Same Same Service Supern'y Service Supern'y	April 1, 1781	£135 90 72 48 48 48 48 36 108	£270 - 260 633	Judgment sup. court Henrico, (depending in court of appeals,) for \$13,187; half pay for life. Paid April, 1792, £678 15 10, (prin. & int.) commutation. Depending in the sup. court of Henrico. Paid April 1791, £526 1 4, (prin. and int.) commutation. Judgment sup. court Henrico, (depending in court of appeals,) for \$8,970; half pay for life.
Illinois Troop of Light Dragoons.		John Rogers - James Merriwether John Thornton - S Officers.	Captain - Lieutenant Cornet -	Supern'y Service - Supern'y	•	£90 60 48	<u>-</u>	Judgment sup. court Henrico, (depending in the court of appeals,) for \$2,860; half pay for life. The name is Thruston.
State Cavalry.	The officers always had a command before the time of the board's sitting.	John Nelson - Edmond Read	Major - Captain - do - do - Lieutenant do - Cornet -		6th Feb. 1783	£108 90 90 90 60 60 60 48 48	90	Paid \$3,600, commutation; act of Jan. 1827. Paid £1,548, commutation, in April, 1795. Paid \$3,000, commutation; act Feb. 1827. Paid \$1,210, commutation; act Feb. 1827. Paid \$1,624 98, in part of commutation, under act of 1827-8. Paid \$1,600, commutation; act of March, 1827—(Tinsley's pension deducted.) Paid \$2,500, commutation; act of Feb. 1829.

Illinois.	inclu	h. R. Clarke ohn Montgomery - 'homas Quirk obert Todd	Colonel - Lieut. Col. Major - Captain -			£135 108 90 72		peals) for \$4	,897; hali	nrico, (depend		
A COLUMN TO SERVICE AND ADDRESS OF THE PERSON ADDRESS OF THE PERSON AND ADDRESS OF THE PERSON AN	May, 350. 1780, d to 130. Jan. 28, ecruits, 130.	saac Taylor ohn Bailey tichard Braskin ohn Gerrault oseph Calvet ames Montgomery braham Chaplin tichard Clarke arrett Williams Villiam Clarke	do - do - do - do - Lieutenant			72 72 72 72 72 72 72 72 72 48 48 48 48 48 48	THE WASHINGTON AND SECTION ASSECTION AND SECTION ASSECTION A	Do	do	do	for \$7,405;		do
	st State -		- (-					•				- £	,581
	ond State -			•	• 9 9	-	-	•	•	-		-2 3 7 12 1	,245
Stat	te Artillery te Garrison		-	-		•		-		-			2,295
	e Garrison			-	•	-		-		•	•		000
Til:													03
Illin	nois Dragoon	110 =											
Illin Stat	te Cavalry								-	-			633 198 654
Illin Stat	te Cavalry nois Regime		D				Miles. Uni						198
Illin Stat	te Cavalry	Total	amount	rottle ne	mont.		sp dinger us			Total Care Control		. £	198 654 1,053
Illin Stat	te Cavalry	Total	amount and Crock	cett's regi	ment					The car of the least		. £	19 65 1,05

'Tis supposed that some officers, whose names are inserted in the foregoing

lists, are dead.

The time of the half pay's commencing could not possibly be ascertained in the foregoing lists. Some officers ('tis believed) that were supernumeraries when the boards sat, were afterwards called into service; and many officers are not yet entitled to warrants for half pay, as it is not a year since they ceased to receive full pay. Generally the officers when they apply for warrants, must themselves satisfy the Auditors with respect to the time their half pay commences.

The reduction of the State regiments, agreeable to the resolution of As-

sembly of October, 1780, took place Feb. 5th, 1781.

CITY OF RICHMOND, to wit:

William Duval personally appeared before me the undersigned, an Alderman of the city of Richmond, and made oath that he was well acquainted with the handwriting of Colonel George Muter, deceased; and that he believes that this document, containing three sheets, commencing "a list of officers of the State line, &c." and endorsed "arrangement of half pay officers, State line, No. 1," was wholly written by the said George Muter, deceased. Given under my hand, this 18th day of June, 1830.

JAMES RAWLINGS.

I do hereby certify, that the foregoing document, with the exception of the marginal notes in red ink, and with the exception of Major William Duval's affidavit, at the end, is truly copied from an original paper found by Judge Cabell among the papers of Colonel Read, deceased, and deposited by him in this office.

Given under my hand at the Auditor's office of Virginia, this 17th day

of August, 1831.

JAS. E. HEATH, Auditor of Public Accounts.

Proceedings of a board of officers, late of the State line and Navy, that sat at Richmond in consequence of a requisition of the Supreme Executive, on Thursday the 15th May, 1784.

Present-Com. Barron, Col. Muter, Col. Meriwether, and Capt. Lilly.

The board examined the list of officers of the navy, which is subjoined, and find, from the best evidence they can procure, that it is agreeable to the arrangement of the officers of the navy next preceding the fall session of Assembly, in 1781; and that the officers that are now alive, whose names are included in the said list, have always behaved themselves in such a manner as to be justly entitled to all the emoluments given by law to the officers of the State navy. The board, however, are informed that Lieut. Gray, in his lifetime, and while he commanded the Cormorant, behaved much amiss in making away with stores entrusted to his care. This happened in the year 1783.

List of officers of the State Navy, agreeable to the arrangement next preceding the fall session of Assembly, in 1781.

James Barron, commodore, con	nmissioned July	3, 1780.
	do. Janua	
	do. Janua	
Richard Taylor, do. when	commissioned no	ot known.
Celey Saunders, do.	do.	since dead.
Edward Travis, do.	do.	same.
Willis Wilson, do.	do.	a la a rational de la caraci
James Markham, do.	do.	and there iver minutes we
Wright Waistcoat, do.	do.	since dead.
Elliot, do.	do.	and a rate drank! It as
John Harris, do.	do.	since dead.
William Saunders, do.	do.	
Michael James, lieutenant,	do.	
Gray, do.	do.	since dead.
Thos. Chandler, do.	do.	same.
William Steel, do.	do.	
Wm. H. Parker, do.	do.	
	JAMES	BARRON President

In Council, May 27, 1784. BENJAMIN HARRISON, Jr.

Auditor's Office of Virginia, 16th August, 1831.

I do hereby certify, that the within document, commencing "Proceedings of a Board," &c., and ending with the signature of "Benjamin Harrison, jr." is a true copy of an original paper deposited in this office by Judge William H. Cabell, found by him among the papers of Col. Reed, deceased. I further certify, that of the officers of the navy named in the within report, the following have received from the State of Virginia the amount of half pay, for life, opposite to their respective names, viz:

The representatives of Commodore James Barron, - principal and interest, by a judgment of the superior court, Henrico.	2,008	52
The representatives of Captain James Markham, -	8,370	61
principal, judgment superior court, Henrico, affirmed by court of appeals.	0,010	01
The representatives of Captain Thomas Lilly,	3,749	37
principal, judgment superior court, Henrico, affirmed by		

court of appeals.

\$14,128 50

And, that Captain Richard Barron's representatives have obtained a judgment in the superior court of Henrico for the sum of \$1,338, the amount of said Barron's half pay, for life; from which judgment an appeal has been taken to the court of appeals, and is therein now depending.

JAMES E. HEATH,
Auditor of Public Accounts.

November 24, 1831.

I, William Duval, do certify that the three reports of the Board of Officers, who met in Richmond, in Virginia, in 1782, 1783, and 1784, pursuant to an act of Assembly of the November session of 1781, to point out to the Executive of Virginia the names of the meriterious officers who were entitled to half pay, for life, were taken away and could not be found; that the court of appeals of Virginia, in 1791, inquired of the Auditor for the said reports; the Auditor acknowledged he had them, but said he did not know what became of them.

The said reports were carried away by a member of the Assembly, who was a Captain, and was reported as one of the officers who was entitled to half pay. His executor, Judge Cabell, returned them to the Auditor, James E. Heath, Esq. about the 28th of December, 1829.

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WILLIAM DUVAL,

One of the Counsel for the old Revolutionary Officers in 1791.

DISTRICT OF COLUMBIA, Washington county, ss.

Subscribed and sworn to before

JOHN CHALMERS, J. P.

23d December, 1831.

A LIST of sundry payments made by the Auditors of Public Accounts to Officers of the Revolution, or their representatives on account of their commutation of five years' full pay, from April 9, 1791, to July 1, 1796.

Date of payment.	Officers' names.		Commu	tatio	n.			Inter	est.		Rank.
1791, April 9,	William Slaughter	-	£ 480	00	00	Judgment district court	-	£ 221	08	00	Lieutenant.
20	Wyatt Coleman -	-	714	00	00	Do do	-	329	06	03	Lieutenant and Adjutant.
20,	Robert Boush -	-	360	00	00		-	166	01	04	Ensign.
21,	Charles Dabney -	-	1,350	00	00		-	622	16	00	Lieut. Col. Commandant.
23, May 3,	Abner Crump - Nathaniel Rice -	-	720 600	00	00		-	332 276	03	00	Captain.
13,	Windsor Brown -		1,260	00	00		-	581	01	04	Captain and Paymaster.
25.	James Harper -		714	00	00			329	06	03	Lieutenant and Quartermast
June 16.	Cary Wyatt -		720	00	00			332	03	00	Captain, Lieutenant.
792, April 13,	David Mann -		480	00	00	八茶豆 医原生生生生生生		198	15	10	Lieutenant.
May 7,	Churchill Gibbs -	-	480	00	00	Judgment court of appeals		360	08	00	Lieutenant.
14.	Lod Brodie -	-	1.080	00	00	De do	-	583	00	00	Surgeon.
793, Nov. 1,	Pratt Hughes -	-	480	00	00	Do district court		279	00	00	Lieutenant.
794, July 10,	Isaac Holmes -	-	480	00	00	Do court of appeals		307	16	00	Lieutenant and Paymaster.
795, April 14,	Aurand Vogleson	-	900	00	00	D'Est. district court		648	00	00	Captain of Cavalry.
796, July 1,	Nathaniel Fox -	•	720	00	00	Do do	-	562	16	00	Captain.
			£ 11,538	00	00			£ 6,030	17	90	

ADDITIONAL list of payments to officers of the Revolution, or their representatives, for commutation of five years' full pay, and depreciation of pay under sundry acts of the Legislature, and judgments of Henrico superior court.

William Campbell John Nicholas	\$2,400		Commutation Depreciation	\$ 156 40 3,029 40	Act passed Feb. 22, 1820. Do. Feb. 26, 1820. Inte-
	1000		4 4 5 5 6		rest under a judgment
James Barron -	1,729	00	Half pay for life	279 52	of Henrico sup. court. A judgment of the sup. court of Henrico.
Charles Ewell -	2,400	00	Commutation		Act passed Feb. 3, 1825.
John Nicholas -	4,004	97	Com. & dep'n	-	Do do
William Broadus -	1,800	00	Commutation	-	Do Feb. 5, 1825.
Angus Rucker -	2,400	00	Do	0 5 6 6 A	Do Jan. 9, 1826.
ohn Russell .	1,800		Do		Do Jan. 13, 1826.
Freder'k Woodson	2,400	00	Do	0.00	Do Feb. 21, 1826.
Elliot Rucker -	1,800	00	Do		Do Feb. 15, 1826.
Thomas Carter -	3,600	00	Do	-	Do Feb. 23, 1826.
George Triplett -	1,800		Do		Do Jan. 8, 1827.
Thomas Armistead	2,400		Do	-	Do Feb. 25, 1826.
Nathaniel Welch -	2,400	00	Do		Do Jan. 6, 1827.
ohn Nelson -	3,600	00	Do	-	Do Jan. 12, 1827.
Oudley Digges -	1,210	00	Do	-	Do Feb. 27, 1827.
Samuel Tinsley -	1,600	00	Do	1	Do March 2, 1827.
V. Armistead -	3,000	00	Do		Do Feb. 27, 1827.
Christopher Roane	3,000	90	Do	-	7 Acts of session 1827-28,
Tathaniel Savage -	1,624	98	Do in part	-	5 balance still due.
Elias Edmonds -	4,500	00	Do	-	Act Jan. 14, 1829.
lumph'y Marshall	2,433	25	Do	- 10	Jan. 16, 1829.
Villiam Graves -	2,500		Do	4 3 3 -	Feb. 10, 1829.
ohn Fleet -	800	00	In part do	-	Act Feb. 16, 1829; bal- ance still due.
ames Markham -	8,370	00	Half pay	•	Two judgments of court appeals, and one of su- perior court of Henrico.
homas Lilly -	3,749	37	Do		Judgm't court of appeals.
	\$68,642	£1		\$3,365 22	

Paid Sarah Easton and Dorothy Storer, children of Robert H. Harrison, under act of Assembly passed February, 1814. Principal

\$3,025 42 5,947 68

8,973 10 depreciation.

\$139,543 66

Auditor's Office, August 18, 1831.

I do hereby certify that the foregoing is a true statement of moneys paid by the State of Virginia, to officers of the revolution, on account of commutation, half pay, and depreciation.

JAS. E. HEATH,
Auditor of Public Accounts.

No. 13.

Extract from an act of Virginia Assembly, passed October, 1778, entitled "An act for establishing a board of Auditors for Public Accounts."

"Where the Auditors, acting according to their discretion and judgment, shall disallow or abate any article of demand against the Commonwealth, and any person shall think himself aggrieved thereby, he shall be at liberty to petition the high court of chancery, or the general court, according to the nature of his case, for redress, and such court shall proceed to do right thereon; and a like petition shall be allowed, in all other cases, to any other person who is entitled to demand against the Commonwealth, any right in law or equity."

No. 14.

Extract from resolutions of Congress, of March 22d, 1783.

Resolved, "That such officers as have retired at different periods, entitled to half pay for life, may collectively, in each State of which they are inhabitants, accept or refuse the same; their acceptance or refusal to be signified by agents authorized for that purpose, within six months from this period; that with respect to such retiring officers, the commutation, if accepted by them, shall be in lieu of whatever may now be due to them, since the time of their retiring from service, as well as of what might hereafter become due; and that so soon as their acceptance shall be signified, the Superintendent of Finance be, and he is hereby directed to take measures for the settlement of their accounts, accordingly, and to issue to them certificates, hearing interest at six per cent."

No. 15.

Extract from an act of the Virginia Assembly, of October, 1777, entitled "An act for speedily recruiting the Virginia regiments on the continental establishment, and for raising additional troops of volunteers."

"Be it enacted, &c. That the battalion on Commonwealth establishment, under the command of Colonel George Gibson, and now in continental service, be continued in the said service instead of the ninth Virginia regiment, made prisoners by the enemy in the battle of Germantown, until the officers and men of the said regiment shall be exchanged, or the time of service of the men in the said first battalion shall be expired."

No. 16.

Extract from an act of the Virginia Assembly of May, 1779, entitled "An act concerning officers, soldiers, sailors, and marines."

"And for the greater security of the inhabitants of the county of Illinois, Be it enacted, That one troop of horse shall be raised, to consist of one captain, one flieutenant, one cornet, and thirty-two privates, the officers to be

appointed by the Governor with advice of council, and commissioned by the Governor, and to receive the same pay, rations, and forage, as is allowed to the cavalry now in the continental service; and the horses, arms, and accoutrements, to be provided for them in such manner as the Governor, with the advice of the council, shall direct. Every soldier who enlisted into the corps of volunteers commanded by Colonel George Rogers Clarke, and continued therein till the taking the several posts in the Illinois country, shall, at the end of the war, be entitled to a grant of two hundred acres of any unappropriated lands within this Commonwealth, on the terms hereinbefore declared."

No. 17.

Extract from an act of the Virginia Assembly of October, 1779, entitled "An act to regulate and ascertain the number of land forces to be kept up for the defence of the State."

"That the State may incur no greater expence than the exigencies of affairs requires, and that the public revenue may be aided by every means which prudence and economy dictate: Be it enacted, That one regiment only (two having been previously required) shall be raised for the defence of the western limits of this State. The said regiment to be completed, and in aid thereof, the corps of infantry under the command of Colonel Slaughter, to be attached to, and considered as part of the same regiment. All privates recruited under the last recited act for the defence of the western limits of this State, shall be incorporated into the said regiment, and shall be commanded by officers to be commissioned by the Governor, with the advice of his council."

CLAIMS OF VIRGINIA.

Sir: I would ask permission to submit the accompanying notes, through you to the Select Committee, hoping that they may serve, in some degree, to aid in the investigation and arrangement of the subjects embraced in the memorial and documents.

I have the honor to be,

Yours, very respectfully, THOMAS W. GILMER, Commissioner, &c.

To John S. Barbour, Esq.

Chairman of the Select Committee of the House of Representatives to whom was referred the memorial, &c. on the claims of Virginia against the United States.

The Revolutionary claims of the State of Virginia on the United States, are of three several classes, viz:

First. The money which has been paid by the State under the act of Assembly of May, 1779, an extract from which is marked No. 4, among the printed documents accompanying the memorial. These payments have been made to officers of the continental as well as the State line. The promises of bounties made by Virginia, included the troops of both lines; and her

obligations to the continental officers have not been regarded as cancelled, until they were adequately assumed by the United States. The regiments of Colonel Brent, Colonel Marshall and Colonel Muter, and the corps of cavalry commanded by Major Nelson, it will be seen, were troops of the State line: those of Colonel Clarke, Colonel Crockett and Colonel Gibson, and Rogers' corps of dragoons, were on the footing of continental troops. Gibson's regiment was attached, by law, to the continental line—proper; while the troops of Clarke, Crockett and Rogers, having been engaged in the conquest and defence of the Northwest Territory, their expenses ought to be defrayed, it is thought, by the United States, under the terms of the cession. Reference to the printed documents, from page 48 to 57, will show to which of the respective lines the officers, whose claims have been paid, belonged. The amount of payments which have been made by Virginia is about \$139,543 66.

Second. For the amount of the judgments which have been rendered against the State, on claims of revolutionary officers or their representatives. These judgments, like the payments, have been obtained on claims of officers belonging to the continental as well as to the State line, as will be seen on inspection of the documents above referred to. The amount claimed for the officers of each line may be ascertained by observing the corps to which they belonged. The amount for which judgments have been rendered, is

about \$241,345.

Third. The third class includes those claims for half pay which have not yet been prosecuted against the State, or on which no judgments have been rendered. The amount of these cannot be accurately known, until the officers, or their representatives, come forward and establish their claims. As the State of Virginia never commuted the half pay claims of her officers, and as it is probable that the claimants would not now consent to take five years' full pay instead of the half pay for life, unless where the officer died within ten years after the close of the war, (in which case the Government would not give it,) there is no criterion by which the amount of these unprosecuted claims can be correctly estimated. The estimate which has been submitted is entirely conjectural, and is founded on the average period of the lives of those officers whose claims have either been paid or prosecuted. This estimate, amounting to about \$300,600, includes upwards of \$60,000 for which claims have been asserted, and which are in the course of judicial investigation; so that the claims which are not in course of prosecution, would probably not exceed (according to the principles of the estimate made) \$240,000.

It should be observed, that these outstanding claims can only be estimated by the annual half pay and number of the respective officers as reported by the board of officers, convened under the act of 1781, (No. 10.) If these claims to half pay are never asserted, they will not have to be paid. When they shall be asserted, if the proof is not deficient, and they come within the principles of those cases in which judgments have been rendered, the

amount will be ascertained in each case, as payment is demanded.

As the claim of the State of Virginia rests on the same general grounds, with regard to all these classes, the same justice which would refund what has been paid, or which would assume, specifically, what has been prosecuted to judgments against the State, would also provide for the discharge of whatever sums may be hereafter established as due, on the principles of these cases which have been adjudicated. If the obligation to recognize the

general claim is conceded, the only difficulty will be in ascertaining the amount of the outstanding claims. This difficulty is obviated by the consideration that they cannot be paid until they have been ascertained; and, if they should be settled on the principles of the cases decided, it matters not by whom those principles are to be applied—whether under the authority of Virginia or of the United States. These outstanding claims, like those which have been paid, and for which judgments have been rendered, are due to officers of the continental and State lines. It is presumed that no doubt can exist as to the provision for the claims of the continental line. The only question, then, is, as to the claims of the State line. The reasons which have induced the belief that these claims are valid against the United States, have been fully set forth in the memorial on the subject, and it is needless to repeat them.

WAR DEPARTMENT, January 14, 1832.

Sir: Agreeably to your request, I have to inform you that the regiment commanded by Colonel George Gibson, of the Virginia line, was, on the 12th January, 1830, decided by the late Secretary of War, to be a continental regiment, from October 1777; it appearing to his satisfaction, that, by an act of the Virginia Assembly, that it was put in the place of the 9th Virginia continental regiment, which was nearly destroyed at the battle of Germantown.

I am, very respectfully, Your ob't servant,

LEW. CASS.

Hon. J. S. Barbour,

House of Representatives.

WASHINGTON, January 14th, 1832.

DEAR SIR: I have just received your letter, making inquiries respecting the military service of certain regiments, in the State line of Virginia, during the war of our revolution.

The first and second State regiments, commanded by Cols. Gibson and Dabney, marched to the north, I am almost confident, in 1777, though it might be early in 1778; and served in the army, under the immediate command of General Washington, until the close of the campaign of 1779.

A legionary corps, composed of the State artillery regiment, the State garrison regiment, and Nelson's corps of cavalry, marched to the south in 1778, under Col. Porterfield, and were engaged in the battle of Camden, where Gates was defeated, and Porterfield was killed. They marched from Williamsburg, early in the campaign of 1780.

I am, dear sir, with great respect, Your ob't servant,

J. MARSHALL.